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THE
PLEADER'S ASSISTANT;
 CONTAINING A
 SELECT COLLECTION
 OF
from 5
 PRECEDENTS
 OF
 MODERN PLEADINGS,
 IN THE COURTS OF
 KING'S BENCH and COMMON PLEAS, &c.

VIZ.

DECLARATIONS, AVOWRIES, PLEAS,		REPLICATIONS, REJOINDERS, DEMURRERS, &c.
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In a VARIETY of ACTIONS:

INCLUDING

The most usual as well as more special MATTERS;

WITH

FORMS of WRITS in several CASES:

INTERSPERSED WITH

Curfory OBSERVATIONS and INSTRUCTIONS.

The whole drawn and settled by the most eminent COUNSEL
 of their time, viz.

Serjeant AGAR, —— BOOTLE, —— BELFIELD, Sir W. CHAPPLE, Serjeant DRAPER,	Sir J. DARNELL, Serjeant EYRE, —— HAWKINS, —— HUSSEY, Mr. HARDCASTLE,	Mr. L. ROBINSON, Sir M. WRIGHT, THE LATE Mr. WARREN, AND OTHERS.
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Rec. May 13, 1889

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P R E F A C E.

THE frequent necessity of having recourse to some certain forms and precedents, experienced by those who either possess or desire to obtain any degree of acquaintance with the science of pleading, first suggested the purpose of the present compilation, it having been originally made by a gentleman of considerable knowledge and experience at the bar, for his own more immediate use; by whom the whole was transcribed, and a selection made of such precedents as were judged to be best adapted to the most usual occasions, as well as to the variety of more special matters. The scarcity of information of this kind of late years communicated to the public, (no original collection of this nature, except the Pleadings to Lord Raymond's Reports, having been published for near fifty years) the consequent necessity of recurring to ancient precedents, and the advantage of adding to the variety of those already extant,

others drawn by more modern hands, were the principal inducements to this publication. It is thought unnecessary to add any thing in recommendation of the precedents of which the present collection consists, it being sufficient to refer the reader to the names of the eminent pleaders that occur in the course of the work.

It may, however, be proper to mention, that in addition to the materials abovementioned, the work is improved by the addition of the whole of the pleadings, (drawn by several of the most eminent counsel of the present day) in a special case in error, which may be found under that head; and with several other modern precedents, which have been obligingly communicated.

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PRECEDENTS

OF

DECLARATIONS, PLEADINGS, &c.

COMMON COUNTS:

In the King's Bench.

London, } *J. H.* complains of *R. P.* being in the custo- *Indebitatus*
to wit, } dy of the marshal of the *Marshalsea* of our *assumpsit* for
lord the now king, before the king himself, of a plea money paid,
of trespass on the case; for that laid out, and
expended.

WHEREAS the said *R. P.* upon the eighteenth day *Serjeant*
of *April*, in the year of our Lord one thousand seven *Draper.*
hundred and thirty three, at *London* aforesaid, was in- *Lincoln v.*
debted unto the said *J. H.* in the sum of one hundred *Parr.*
pounds of lawful money of *Great Britain*, at the special *2 Keb. Rep.*
instance and request of the said *R. P.* for him, the said *R.* *781.*
P. and for his use, before that time paid, laid out and
expended; and being so indebted, the said *R. P.* after-
wards to wit, upon the same day and year, at *London*
aforesaid, in consideration thereof, took upon himself
and then and there faithfully promised the said *J. H.* to
pay him the said twenty pounds, when he should be
afterwards thereunto required.

In the Common Pleas.

Middlesex, } *A. B.* late of *Westminster*, in the county *Indeb. as-*
to wit, } of *Middlesex*, dealer in coals, was attach- *sumpsit* for
ed to answer *Thomas Dunn*, in a plea of trespass on the money lent
case; and whereupon the said *Thomas Dunn*, by *J. R.* *and advanc-*
his attorney, complains, that *ed.*
Warren.

WHEREAS

DECLARATIONS, PLEADINGS, &c.

WHEREAS the said *A. B.* on the first day of *January*, in the year of our Lord one thousand seven hundred and fifty six, at the parish of *Saint Clement Danes*, in the county of *Middlesex*, was indebted to the said *Thomas* in other one hundred pounds, of like lawful money, by the said *Thomas* before that time lent and advanced, to the said *A. B.* and at his special instance and request; and being so indebted, he the said *A. B.* in consideration thereof, afterwards, to wit, the same day and year last aforesaid, at *Westminster* aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *Thomas*, to pay him the said last mentioned sum of money, when he should be afterwards thereunto requested.

*Indeb. as-
sumptit for
money had
and receiv-
ed to plain-
tiff's use.
Warren.*

AND WHEREAS ALSO the said *A. B.* afterwards, to wit, on the same day and year last aforesaid, at *Westminster* aforesaid, in the county aforesaid, was indebted unto the said *Thomas*, in other one hundred pounds of like lawful money of *Great Britain*, for money, he the said *A. B.* before that time had had and received to the use of the said *Thomas*; and being so indebted, he the said *A. B.* in consideration thereof, afterwards, to wit, the same day and year last aforesaid, at *Westminster* aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *Thomas*, to pay him the said sum of money last mentioned, when he should be afterwards thereto requested.

*Indeb. as-
sumptit for
goods, &c.
sold and de-
livered.*

AND WHEREAS ALSO the said *A. B.* afterwards, to wit, on the same day and year last aforesaid, at *Westminster* aforesaid, in the county aforesaid, was indebted to the said *D.* in sixty pounds of lawful money of *Great Britain*, for divers goods, wares, and merchandizes, by the said *D.* to the said *A. B.* and at his special instance and request, before that time sold and delivered; and being so indebted, the said *A. B.* in consideration thereof, afterwards, to wit, on the day and year aforesaid, at *Westminster* aforesaid, in the county aforesaid, took upon himself, and then and there faithfully promised the said *D.*

D. that he, the said *A. B.* would well and truly pay, and satisfy to the said *D.* the said sixty pounds, when he should be afterwards thereunto required.

AND WHEREAS ALSO the said *A. B.* afterwards, to wit, on the day and year aforesaid, at *Westminster* aforesaid, in the county aforesaid, in consideration that the said *D.* had, before that time, at the like special instance and request of the said *A. B.* sold and delivered to the said *A. B.* divers other goods, wares, and merchandizes, took upon himself, and then and there faithfully promised the said *D.* that he, the said *A. B.* would well and truly pay and satisfy, to the said *D.* as much money as the said goods, wares, and merchandizes last mentioned were reasonably worth at the time of the sale and delivery thereof, when he should afterwards be thereunto required; and the said *D.* avers, that the goods, wares, and merchandizes aforesaid last mentioned, were reasonably worth other thirty pounds at the time of the sale and delivery thereof, to wit, at *Westminster* aforesaid, in the county aforesaid, whereof the said *A. B.* then and there had notice.

Quantum
val. thereto.

Farriss. or 7
Mod. 148.

Hart and
Langfeld.

AND WHEREAS ALSO the said *A. B.* afterwards, to wit, on the day and year last mentioned, at *Westminster* aforesaid, in the county aforesaid, accounted with the said *D.* of and concerning divers sums of money from the said *A. B.* to the said *D.* before that time due and owing, and then and there in arrear, and unpaid; and upon that account the said *A. B.* was then and there found in arrear to the said *D.* in sixteen pounds and ten shillings of like lawful money; and being so found in arrear, the said *A. B.* in consideration thereof, afterwards, to wit, on the day and year last mentioned, at *Westminster* aforesaid, in the county aforesaid, took upon himself and then and there faithfully promised the said *D.* that he the said *A. B.* would well and truly pay and satisfy, to the said *D.* the said sixteen pounds ten shillings last mentioned, when he should afterwards be thereunto required.

An account
stated.

2 *Keb. Rep.*
781.

To

DECLARATIONS, PLEADINGS, &c.

To recover on such a count, you must prove the very sum in arrear, as laid in the count, or you will certainly fail. —If there should less appear than due, upon the account stated, that will be evidence on the other counts, in the declaration to which the account relates.

Indeb. assumpsit for goods sold and delivered by three surviving partners against defendant.

AND WHEREAS the said *A. B.* on the said day of in the year of our Lord at afore-
said, in the county afore-
said, was indebted unto the
said *William, Abraham, Henry, John, and Edward*, in the
life time of the said *Edward*, in twenty pounds, for divers
goods, wares, and merchandizes which the said *William, Abraham, Henry, John, and Edward*, before that time
sold and delivered to the said *A. B.* and at his special
instance and request; and being so indebted, he the said
A. B. in consideration thereof, afterwards, to wit, on
the same day and year last afore-
said, at afore-
said, in the county afore-
said, undertook, and then and
there faithfully promised the said *William, Abraham, Henry, John, and Edward*, in the life time of the said *Edward*,
to pay them the said sum of money, when he
should be afterwards thereunto requested.

Quant meruerunt thereto.

AND WHEREAS afterwards, to wit, on the same day
and year last afore-
said, at afore-
said, in the
county afore-
said, in consideration that the said *William, Abraham, Henry, John, and Edward*, in the life time of
the said *Edward*, had before that time sold and delivered
divers other goods, wares and merchandizes, to the said
A. B. and at his like special instance and request, he the
said *A. B.* undertook, and then and there faithfully prom-
ised the said *William, Abraham, Henry, John and Edward*, in the life time of the said *Edward*, to pay them
so much money as they therefore reasonably deserved to
have; and the said *William, Abraham, and John* do aver,
that they the said *William, Abraham, Henry, John, and Edward*, in the lifetime of the said *Edward*, therefore
reasonably deserved to have, of the said *A. B.* other
twenty pounds, to wit, at afore-
said, in the county
afore-
said, whereof the said *A. B.* then and there had
notice.

Middle-

Middlesex, } *B. W.* complains of *T. J.* being, &c. for
to wit. } that WHEREAS the said *T.* on the twen-
tieth day of *May*, in the year of our Lord one thousand
seven hundred and thirty four, at *D.* in the county afore-
said, was indebted unto the said *B.* in three pounds, for
the hire of a certain horse of the said *B.* by the said *B.*
before that time let to hire to the said *F.* and at his spe-
cial instance and request, and he the said *T.* according to
that letting, had used and laboured; and being so in-
debted, &c. AND WHEREAS, &c. in consideration that
the said *B.* had before that time let to hire a certain
other horse of the said *B.* to the said *T.* and at his like
special instance and request was used and laboured in and
about the business of the said *T.* for divers days then
elapsed; and that the said *T.* by virtue of the same letting
last mentioned, had used and laboured the said last men-
tioned horse, about his business, for a long time, to wit,
for the space of ten days then elapsed, he the said *T.*
undertook, and then and there faithfully promised the
said *B.* to pay him so much money as he therefore rea-
sonably deserved; and the said *B.* doth aver, &c. *with a*
common conclusion.

Declaration
for the hire
of a certain
horse.

From Mr.
Warren's
book.

FOR THAT WHEREAS the said *B.* &c. was indebted
to the said *A.* in ten pounds, for the use and occupa-
tion of a certain messuage, with the appurtenances, be-
longing to him the said *A.* situate and being in the parish
of in the county aforesaid, before that time held
and occupied by the said *B.* by the permission of the said
A. and at the special instance and request of the said *A.*
for a long time; to wit, for the space of the half of one
year then elapsed, and being so indebted, &c. *as in*
the next page.

Count for
the use and
occupation
of a messu-
age.

AND WHEREAS afterwards, &c. in consideration
that the said *A.* at the like special instance and request
of the said *B.* had before that time permitted the said
B. to hold and occupy a certain other messuage, with
the appurtenances, of the said *A.* situate and being in
the said parish of in the county aforesaid, for
a long time then elapsed; and that the said *E.* by the
said last mentioned permission of the said *H.* had held and
occupied

Quant. me-
ruit thereto.

DECLARATIONS, PLEADINGS, &c.

occupied the said last mentioned premises for a long time, to wit, for the space of the half of one other year then elapsed, he the said *B.* undertook, and then and there faithfully promised the said *E.* to pay him so much money as he therefore reasonably deserved to have; and the said *A.* doth aver, that he therefore reasonably deserved to have of the said *B.* &c.

*Indebt-
sumpsit for
the use and
occupation
of a messuage
and barn.*

AND WHEREAS ALSO the said *A. B.* afterwards, to wit, on the same day and year abovesaid, at aforeaid, in the county aforeaid, was indebted to the said *E. D.* in the sum of ten pounds of lawful money of *Great Britain*, for the use and occupation of a certain messuage and barn, situate and lying in the parish of *C.* in the city aforeaid, for the space of several years, to wit, from the thirty first day of *August*, in the year of our Lord one thousand seven hundred and thirty five, to the thirty first day of *August*, in the year of our Lord one thousand seven hundred and thirty seven; and being so indebted, he the said *A. B.* in consideration thereof, afterwards, to wit, on the said first day of *September*, in the said year of our Lord one thousand seven hundred and thirty seven, at aforeaid, in the city aforeaid, took upon himself, and to the said *E. D.* then and there faithfully promised, that he the said *A. B.* would well and truly pay, and satisfy the said *E. D.* the last mentioned sum of ten pounds, when he should be afterwards thereto requested.

*Quant. mo-
nit thereon.*

AND WHEREAS ALSO afterwards, to wit, on the same day and year last abovesaid, at aforeaid, in the county aforeaid, in consideration that the said *A. B.* had before that time held, used, and occupied, one other certain messuage and barn, of him the said *E. D.* situate, and lying in the said parish of *C.* in the city aforeaid, for the space of several years, to wit, from the aforeaid thirty first day of *August*, in the year of our Lord one thousand seven hundred and thirty five, to the thirty first day of *August*, in the year of our Lord one thousand seven hundred and thirty seven, aforeaid, he the said *A. B.* took upon himself, and

to

COMMON COUNTS.

7

to the said *E. D.* then and there faithfully promised, that he would well and truly pay and satisfy to the said *E. D.* so much money as he should reasonably deserve to have, for the use and occupation of the messuage and barn aforesaid, when he should be afterwards thereto requested; and the said *E. D.* in fact saith, that he doth reasonably deserve to have of the said *A. B.* for the use and occupation of the messuage and barn so as aforesaid held, used, and occupied by the said *A. B.* other sum of ten pounds, of like lawful money, of which the said *A. B.* afterwards, to wit, on the said first day of *September*, in the year of our Lord one thousand seven hundred and thirty seven, aforesaid, at aforesaid, in the county aforesaid, had notice.

AND WHEREAS the said *A. B.* afterwards, to wit, on the same day and year last mentioned, at aforesaid, in the county aforesaid, in consideration that the said *E. F.* at the like instance and request of the said *A. B.* had let out to hire to the said *A. B.* several horses, of him the said *E. F.* and that the said *A. B.* had rode and travelled the said horses on the same hire, took upon himself, and then and there faithfully promised to pay to the said *E. F.* so much money as he reasonably deserved to have for the same; and the said *E. F.* avers, that he reasonably deserved to have for the same, another sum of ten pounds, of like lawful money, to wit, at aforesaid, of which the said *A. B.* then and there had notice.

*Quant. mer-
suit for
horse-hire.*

AND WHEREAS the said *L. B.* and *B. B.* on the first day of *June*, in the year of our Lord one thousand seven hundred and thirty seven, at in the county aforesaid, were indebted to the said *E. W.* in five pounds of lawful money of *Great Britain*, for work and labour before that time done and performed by the said *E. W.* for the said *S.* and *B.* at their special instance and request; and the said *S.* and *B.* being so indebted, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, took upon themselves, and then and there faithfully promised the said *E.* that they

*Indeb. as-
sumpt for
work and
labour.*

they the said *S.* and *B.* would well and truly pay to the said *E.* the said five pounds, when afterwards they should be thereto requested.

*Quant. me-
tuerant
thereto.*

AND WHEREAS ALSO the said *S.* and *B.* afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, in consideration that the said *E.* had, before that time, at the like special instance and request of them the said *S.* and *B.* done and performed other work and labour for the said *S.* and *B.* took upon themselves, and then and there faithfully promised the said *E.* that they the said *S.* and *B.* would well and truly pay and satisfy the said *E.* so much money as he reasonably deserved to have for the same, when they should be afterwards thereto requested; and the said *E.* avers, that he reasonably deserved to have of them, the said *S.* and *B.* for the said work and labour last mentioned, five pounds of like lawful money; to wit, at aforesaid, in the county aforesaid, of which the said *S.* and *B.* then and there had notice.

*Indeb. af-
sumpsit as
well for
work and
labour, as
for necessary
things used
in and about
it.*

AND WHEREAS the aforesaid *A. B.* on the tenth day of *November*, in the year of our Lord one thousand seven hundred and thirty six, at in the county aforesaid, was indebted to the aforesaid *J. S.* and *J. D.* in ten pounds of lawful money of *Great Britain*, as well for the work and labour of them the said *J. S.* and *J. D.* by them the said *J. S.* and *J. D.* and their servants, for the said *A. B.* and at his special instance and request before that time done and performed, as also for divers and necessary things used and applied, in and about the work and labour by them the said *J. S.* and *J. D.* for the aforesaid *E. B.* and at his like special instance and request, before that time found and provided; and the aforesaid *J. B.* being so indebted, in consideration thereof, afterwards, to wit, the same day and year above said, at aforesaid, in the county aforesaid, took upon himself, and to them the said *J. S.* and *J. D.* then and there faithfully promised, that he the said *A. B.* the aforesaid ten pounds, to them the said *J. S.* and *J. D.* when afterwards he should be thereto required, would well and faithfully pay and content.

AND

AND ALSO; WHEREAS the aforesaid *A. B.* afterwards, to wit, the same day and year aforesaid, at aforesaid, in the county aforesaid, in consideration that the aforesaid *J. S.* and *J. D.* at the like special instance and request of him the said *A. B.* by themselves and their servants, had before that time done and performed for the same *A. B.* other work and labour; and had found and provided for the said *A. B.* divers other materials and necessary things used and applied in and about the said work and labour last mentioned, took upon himself, and then and there faithfully promised them, the said *J. S.* and *J. D.* that he the aforesaid *A. B.* would well and truly pay and satisfy the said *J. S.* and *J. D.* so much money as they the said *J. S.* and *J. D.* therefore reasonably deserved to have, when he should be thereto afterwards required; and the said *J. S.* and *J. D.* aver, that they therefore reasonably deserve to have of the said *A. B.* another sum of ten pounds of like lawful money; to wit, at aforesaid, in the county aforesaid, of which the said *A. B.* then and there had notice.

*Quant, mer-
ruit thereto.*

AND WHEREAS ALSO the said *A.* in his life time, afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, was indebted to the said *E.* in his life time, in the sum of nine pounds of like lawful money, as well for the work and labour, care and industry of the said *E.* in his life time, for the said *A.* in his life time, in and about his affairs and business at the special instance and request of the said *A.* in his life time, and on his retainer, by the said *E.* before that time done, performed, and applied; as also for divers sums of money by him the said *E.* in his life time, for the said *A.* in his life time, at his like special instance and request, before that time paid, laid out and expended; and being so indebted, the said *A.* in his life time, afterwards, to wit, on the same day and year, at aforesaid, in the county aforesaid, in consideration thereof, took upon himself, and to the said *E.* in his life time, then and there faithfully promised to pay him the said sum of nine pounds when he should be afterwards thereto required.

*By an executor
against
an executor,
as well for
work and la-
bour, care
and industry
in affairs and
business, as
for money
laid out and
expended.*

Warren.

B

AND

DECLARATIONS, PLEADINGS, &c.

*Quant. me-
rit thereto.*

AND WHEREAS ALSO the said *A.* in his life time, afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, in consideration that the said *E.* in his life time, at the like special instance and request of the said *A.* in his life time, and on his retainer, had before that time done and performed, and applied for the said *A.* in his life time, other his work and labour, care and industry, in and about other the affairs and business of the said *A.* as also divers sums of money, at the like instance and request of the said *A.* in his life time, in and about the said affairs and business of the said *A.* last mentioned, had paid, laid out, and expended; he the said *A.* in his life time, took upon himself, and to the said *E.* in his life time, then and there faithfully promised to pay to the said *E.* as well so much money as he the said *E.* in his life time reasonably deserved to have for the said work and labour, care and industry last mentioned, as also such sums of money as he the said *E.* in his life time had so as aforesaid, paid, laid out, and expended, for the said *A.* in his life time, when he the said *A.* should be afterwards thereto requested; and the said *Mary* in fact saith, that for the work and labour, care and industry of the said *E.* last mentioned the said *E.* in his life time reasonably deserved to have of the said *A.* other nine pounds of like lawful money; and that he the said *E.* in his life time, other nine pounds of like lawful money, in that particular, for the said *A.* had paid, laid out, and expended, to wit, at aforesaid, in the county aforesaid, whereof the said *A.* in his life time, afterwards to wit, on the day and year aforesaid, then had notice.

*Indeb as-
sumpt for
towbargain-
ed and sold,
Hardcastle.
jun.*

AND WHEREAS the said *J. G.* afterwards, to wit, on the same day and year, at aforesaid, was indebted to the said *R. S.* in other sixteen pounds of like lawful money, for tow before that time bargained and sold by the said *R.* to the said *J.* at the special instance and request of the said *J.* and being so indebted, the said *J.* in consideration thereof, afterwards, to wit, on the same day and year, at aforesaid, assumed upon himself, and then and there faithfully promised the said *R.* that

COMMON COUNTS.

11

R. that he the said *J.* would pay to the said *R.* the last mentioned sum of money, when the said *J.* should be requested to pay the same.

AND WHEREAS the said *J.* afterwards, to wit, on the same day and year, at *Quantum*
val. thereto: afore said, in consideration that the said *R.* at the like instance and request of the said *J.* had before that time bargained and sold to the said *J.* other tow, assumed upon himself, and then and there faithfully promised the said *R.* that he the said *J.* would pay to the said *R.* so much money as the last mentioned tow, at the time of the said bargain and sale thereof, was reasonably worth, when the said *J.* should be requested to pay the same; and the said *R.* avers, that the last mentioned tow, at the time of the said bargain and sale thereof, was reasonably worth other sixteen pounds of like lawful money, to wit, at afore said, whereof the said *J.* then and there had notice.

THAT WHEREAS the said *R.* after the first day of On a note of
hand. *May*, in the year of our Lord one thousand seven hundred and five, to wit, on the fourth day of *November*, in the year of our Lord one thousand seven hundred and thirty five, at in the county afore said, made his certain note in writing, commonly called a promissory note, with his proper hand thereto subscribed, bearing date on the day and year last above mentioned, and then and there delivered the said note to the said *A.* by which said note the said *S.* promised to pay to the said *A.* by the name of Mrs. *Ann T.* of *W.* or her order, sixteen pounds ten shillings, for value received, in manner and proportion following, to wit, twenty shillings monthly from the date thereof, until the said sum of sixteen pounds ten shillings should be fully satisfied and paid her the said *A.* by reason whereof, and also by force of the statute in such case lately made and provided, the said *R.* became liable to pay the said sixteen pounds ten shillings to the said *A.* according to the tenor and effect of the said note; and being so liable, the said *R.* in consideration thereof,

DECLARATIONS, PLEADINGS, &c.

afterwards, to wit, on the day and year last above mentioned, at aforesaid, in the county aforesaid, took upon himself, and then and there faithfully promised the said *A.* that he the said *R.* would well and truly pay and satisfy the said *A.* the said sixteen pounds ten shillings, according to the tenor and effect of the said note.

By the indorsee on an indorsed note against the drawer, which was payable at ten days after the arrival of a person, with an averment that he was arrived.

Perused by
Warren.

FOR THAT WHEREAS the said *A.* after the first day of *May*, in the year of our Lord one thousand seven hundred and five, to wit, on the third day of *February*, in the year of our Lord one thousand seven hundred and thirty six, at in the county aforesaid, made his certain note in writing, subscribed with his own hand, commonly called a promissory note, bearing date the day and year last aforesaid; by which said note, he the said *A.* at ten days after the arrival of Captain *W. U.* promised to pay to *C. D.* or his order, the sum of six pounds ten shillings, for goods received of *J.* in *Newfoundland*, by him the said *A.* and the said sum of money being unpaid, the said *C.* afterwards, to wit, on the seventh day of *February*, in the year last aforesaid, at aforesaid, in the county aforesaid, by an indorsement on the said note, appointed the contents thereof to be paid to the said *J.* for value received by him the said *C.* of which the said *A.* afterwards, to wit, on the same day and year last aforesaid, at aforesaid, in the county aforesaid, had notice; and the said *J.* doth aver, that after the making the said note, and before the exhibiting the bill of the said *J.* to wit, on the tenth day of *June*, in the year of our Lord one thousand seven hundred and thirty seven, the said Captain *W. U.* named in the said note, arrived at aforesaid, in the county aforesaid, of which the said *A.* then and there had likewise notice; by reason of which said premisses, and also by force of the statute in such case lately made and provided, the said *A.* became liable to pay to the said *J.* the said sum of money contained in the said note, according to the tenor and effect of the said note and indorsement thereon, as aforesaid; and being so liable, the said *A.*

in

in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at aforesaid, in the county aforesaid, took upon himself, and then and there faithfully promised the said *J.* that he the said *A.* would pay to the said *J.* the said sum of money contained in the said note, according to the tenor and effect of the said note and indorsement thereon, as aforesaid.

W. H. late of, &c. to answer to *R. S.* That, whereas the city of *London* now is, and from time immemorial hath been an ancient city: And whereas, in *London* aforesaid, to wit, at the parish of in the ward of *Cheap*, there is, and from time immemorial there hath been this custom used and approved of, to wit, that, if any servant of any goldsmith, or of any other person in the said city, trading or using commerce, in receiving and paying of monies employed and intrusted by such his master, in keeping and writing of books and bills, or notes concerning such receipts and payments, should make any bill or note in writing, subscribed with the proper hand and name of such servant, and by such his bill or note promise to pay for such his master, to any other person in such bill or note named, or the bearer, on demand, any sum of money mentioned in such bill or note; then such master of such servant, so making and subscribing such bill or note, from time immemorial hath been liable, and hath been accustomed or liable to the payment of such sum of money mentioned in such bill or note, to such persons named in such bill or note, to whom such sum of money mentioned in such bill or note, was so promised or expressed, or payable upon demand, according to the tenor of such bill or note. And whereas the said *W.* at the time of the making of the note herein after mentioned, to wit, on the nineteenth day of *September*, in the year of our Lord one thousand seven hundred and twenty, and long before and afterwards, at *London* aforesaid, in the parish and ward aforesaid, was a goldsmith, and a trader in that business; and a person then trading and having commerce of and in the receiving and paying of money,

Against a goldsmith, on a note drawn by his servant, payable to plaintiff or bearer, alleging the custom of *London*, to make him liable for the act of his servant.

Warren.

money, and on the same day and year, and long before and afterwards, one *R. W.* was there a servant of the said *W.* and was by him employed and intrusted in the keeping and writing of books and bills or notes, concerning such receipts and payments; and the said *R. W.* so being the servant of the said *W.* as aforesaid, and being employed and intrusted as aforesaid, he the said *R. W.* on the said nineteenth day of *September*, in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, according to the said custom, made a certain note in writing, bearing date the same day and year, subscribed with the proper hand and name of the said *R. W.* and by that note the said *R. W.* promised to pay to the said *R. S.* by the name of Mr. *R. S.* or bearer, upon demand, two hundred and thirty pounds, for the said *W.* then being his master, as aforesaid; whereby the said *W.* according to the said custom, became liable to pay to the said *R. S.* upon demand, the said two hundred and thirty pounds mentioned in the said note, according to the tenor of the said note, and according to the said custom; and being so liable, the said *W.* in consideration thereof, afterwards, to wit, on the said nineteenth day of *September*, in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *R. S.* to pay him the said sum of money contained in the said note, according to the tenor of the said note; and although the said *R. S.* afterwards, to wit, on the first day of *March*, in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, carried and shewed the said note made by the said *R. W.* so as aforesaid to the said *W.* and demanded the payment of the said two hundred and thirty pounds of the said *W.* yet the said *W.* not regarding his said promise and undertaking, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *R. S.* hath not yet paid the said two hundred and thirty pounds or any part thereof to the said *R. S.* (although to do this, the said *W.* afterwards the said day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, by the said *R. S.* was

R. S. was requested) but the said *T.* to pay the same to him hath hitherto refused, and still doth refuse.

Then add a count on the note, as if made by defendant himself.—Then a count for money lent, and another for money had and received, and a common conclusion to the three last promises.

R. S. against W. H. THAT WHEREAS the city of London (setting out the custom, exactly as in the former precedent to the words, and whereas) then say, One *T. A.* now deceased, and the said *W.* at the time of the making of the several promises hereafter mentioned, and before and afterwards, at London aforesaid, in the parish and ward aforesaid, were goldsmiths and partners, and joint traders in that business, and persons there trading and having commerce of, and in the receiving and paying of monies; and on the same day and year, and long before and afterwards, one *R. W.* was then a servant of the said *T.* and *W.* and was by them employed and intrusted in keeping and writing books, and bills and notes concerning such receipts and payments; and the said *R. W.* so being the servant of the said *T.* and *W.* as aforesaid, and being employed and intrusted as aforesaid, he the said *R. W.* on the nineteenth day of September, in the year of our Lord one thousand seven hundred and twenty, at *L.* aforesaid, in the parish and ward aforesaid, according to the said custom, made a certain note in writing, subscribed with the proper hand and name of the said *R. W.* bearing date the same day and year; and by that note, the said *R. W.* promised to pay to the said *R. S.* by the name of Mr. *R. S.* or bearer, upon demand, two hundred and thirty pounds for the said *T.* and *W.* (they then being his masters as aforesaid) whereby the said *T.* and *W.* in the life time of the said *T.* according to the custom aforesaid, became liable to pay to the said *R. S.* upon demand, the said two hundred and thirty pounds mentioned in the said note, according to the tenor of the said note, and the custom aforesaid; and being so liable, the said *T.* and *W.* in the life time

Drawer against surviving goldsmith's partner, on note drawn by their servant, and part of the money paid in the life time of deceased partner, alledging the custom of London.

of

of the said *T.* in consideration thereof, afterwards, the same day and year abovesaid, at *London* abovesaid, in the parish and ward abovesaid, undertook, and then and there faithfully promised the said *R. S.* to pay him the said sum of money contained in the said note, according to the tenor and effect of the said note; and although the said *R. S.* afterwards, to wit, on the first day of *March*, in the year abovesaid, at *London* abovesaid, in the parish and ward abovesaid, carried and shewed the said note, so made by the said *R. W.* as abovesaid, to the said *T.* and *W.* in the life time of the said *T.* and demanded of the said *T.* and *W.* the payment of the said two hundred and thirty pounds; and although the said *T.* and *W.* on the same first day of *March*, in the year abovesaid, at *L.* abovesaid, in the parish and ward abovesaid, paid to the said *R. S.* one hundred and sixty five pounds, parcel of the said two hundred and thirty pounds; yet the said *T.* and *W.* in the life time of the said *T.* not regarding their said promise and undertaking as to the payment of sixty five pounds, residue of the said two hundred and thirty pounds, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *R. S.* in this particular, the said *T.* and *W.* in the life time of the said *T.* or either or them, nor the said *W.* after the death of the said *T.* hath not paid the said sixty five pounds, or any part thereof, to the said *R. S.* (although the said *T.* and *W.* in the life time of the said *T.* and the said *W.* after the death of the said *T.* to wit, on the twentieth day of *April*, in the year of our Lord one thousand seven hundred and twenty one, at *L.* abovesaid in the parish and ward abovesaid, to pay the same, were, by the said *R. S.* requested to pay the same to him) but have hitherto altogether refused and the said *W.* to pay the same to him still doth refuse.

Add a count on the note, as if made by T. and W. themselves, without setting out the custom.—Another for money lent; another for money had and received; and common conclusion to the three last counts.

W. M.

W. M. and J. O. against E. L. and T. L. FOR THAT WHEREAS on the nineteenth day of *September*, in the year of our Lord one thousand seven hundred and twenty four, and before and afterwards, as well the said E. and T. as the said W. and J. were persons trading by way of merchandizing, and using commerce within the kingdom of *England*, to wit, at *Westminster*, in the county aforesaid; and the said E. and T. then and before, and afterwards, were partners in their said commerce; and the said W. and J. then and before, and afterwards, were likewise partners, in their said trade and commerce. AND WHEREAS the said E. on the said nineteenth day of *September*, in the year of our Lord one thousand seven hundred and twenty four, at *Westminster* aforesaid, made his certain note in writing, called a promissory note, subscribed with his own proper hand, for himself and the said T. his said partner, bearing date the same day and year, and then and there delivered the said note, to the said W. to the use of the said W. and J. and by the said note for himself, and the said T. his partner, promised to pay to the said W. or J. or their order, the sum of forty seven pounds ten shillings and four pence, for value received, for himself and the said T. by reason thereof, and by force of the statute, in such case made and provided, and by the law of merchants, the said E. and T. became liable to pay to the said W. and J. the said sum of money contained in the said note, according to the tenor and effect of the said note; and being so liable, they the said E. and T. afterwards, to wit, the same day and year, at *Westminster* aforesaid, undertook, and then and there faithfully promised the said W. and J. to pay them the said sum of money contained in the said note, according to the tenor and effect of the said note.—*A count for money lent, and common conclusion.*

J. K. Esq; and M. S. widow, assignees of the debts of J. M. late of the city of *Bristol* aforesaid, merchant, being a bankrupt according to the form of the statutes concerning bankrupts made and provided, complain of

City of
Bristol.
Note of
hand of as-
signees of a
bankrupt,

R. P.

who was
drawee of a
note against
the drawer.

R. P. being, &c. FOR THAT WHEREAS the said *R.* on the fourth day of *April*, in the year of our Lord one thousand seven hundred and twenty six, at the city of *Bristol* aforesaid, in the county of the said city, made his certain note in writing commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year, and then and there delivered the said note to the said *J.* and by that note promised to pay to the said *J.* the sum of seven pounds upon demand for value received; and by reason thereof, and by force of the statute in such case made and provided, he the said *R.* became liable to pay to the said *J.* the said sum of money contained in the said note, according to the tenor and effect of the said note; and being so liable, he the said *J.* afterwards, to wit, on the first day of *May*, in the year of our Lord one thousand seven hundred and twenty six, at the city of *Bristol* aforesaid, in the city of the said county, became a bankrupt within the meaning and intent of the said statute concerning bankrupts; (the said seven pounds in the said note mentioned, or any part thereof not being then paid or satisfied) and the said *R.* afterwards, to wit, on the first day of *May*, in the year aforesaid, at the city of *Bristol* aforesaid, in the county of the said city, in consideration of the premisses aforesaid, undertook, and then and there faithfully promised the said plaintiffs, they then being assignees of the debts of the said *J.* as aforesaid, to pay them the said seven pounds contained in the said note: AND WHEREAS also the said defendant afterwards, to wit, on the said first day of *May*, in the year of our Lord one thousand seven hundred and twenty six aforesaid, at the city of *Bristol* aforesaid, in the county of the said city, was indebted to the said plaintiffs as assignees of the debts of the said *J.* as aforesaid, in other seven pounds for money had and received by the said *R.* for the use of the said *J.* before that time, and before the said *J.* became a bankrupt as aforesaid; and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the city of *Bristol* aforesaid, in the said county of the said city, under-

undertook, and then and there faithfully promised the said plaintiffs as assignees, in manner aforesaid, to pay them the said seven pounds last mentioned, when he should be afterwards thereunto requested; yet the said R. not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiffs as assignees in form aforesaid, in this particular hath not yet paid the said several sums of money, or any part thereof, to them the said plaintiffs, assignees as aforesaid, or to either of them, (although to pay the same the said R. was requested by the said plaintiffs, assignees as aforesaid, afterwards, to wit, on the first day of *July*, in the year above said, at the city of *Bristol* aforesaid, in the county of the said city) but he to pay the same to them or either of them, hitherto hath refused, and still doth refuse to the said plaintiffs, their damages of twenty pounds, and therefore they bring their suit, &c.

This from
Mr *War-*
ren's prece-
dent book.

Pledges to prosecute } John Doe,
and
Richard Roe.

B. H. complains of *N. B.* being in the custody, &c.
FOR THAT WHEREAS the said *N.* on the fourth day of *January*, in the year of our Lord one thousand seven hundred and twenty eight, at *London* aforesaid, in the parish of in the ward of *Cheap*, made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the day and year aforesaid, and then and there delivered the said note to one *M. H.* then the wife of the said *B.* to the use of the said *B.* and by the said note promised to pay to the said *M.* then the wife of the said *B.* by the name of *Mrs. Mary Harris* or bearer, one hundred and seventy six pounds, ten shillings and nine pence, one month after date, for value received by the said *N.* and by reason thereof, and by force of the statute in such case made and provided, the said *N.* became liable to pay to the said *B.* the said sum of money contained in the said note, according to the tenor and effect of the said note;

London.

On note of
hand made
by defend-
ant to
plaintiff's
wife during
coverture.
Warren.

From *Warren's* precedent book.

note; and being so liable, he the said defendant promised to pay, *in common form*; another count for one hundred and seventy six pounds, seventeen shillings and nine pence lent by plaintiff or defendant; and common conclusion.

London.

Drawee against drawer on note payable when defendant's wife came of age.

Warren.

H. S. late of, &c. was attached to answer unto *M. B.* widow, of a plea of trespass on the case, &c. and thereupon the said *M.* by *J. C.* her attorney, complains, THAT WHEREAS the said *H.* on the twenty seventh day of *June*, in the year of our Lord one thousand seven hundred and thirty, at *London* aforesaid, to wit, in the parish, &c. made his certain note in writing commonly called a promissory note, subscribed with his own proper hand, bearing date the day and year aforesaid, and then and there delivered the said note to the said *M.* and by the said note acknowledged himself to have borrowed and received, on the said twenty seventh day of *June*, in the year of our Lord one thousand seven hundred and thirty aforesaid, of the said *M.* the sum of one thousand pounds, being for the purchasing for himself a lieutenant's commission in the first regiment of Foot Guards, under the command of the Most Noble the Duke of *Marlborough*; and which said one thousand pounds, the said *H.* promised to pay upon demand so soon as his wife should attain to the age of twenty one years; and by reason thereof, and by force of the statute in such case made and provided, he the said *H.* became liable to pay to the said *M.* the said sum of money contained in the said note, according to the tenor and effect of the said note; and being so liable, he the said *H.* promised to pay (*in common form.*)—*A general count laid the same day for another one thousand pounds for money had and received, which defendant promised to pay upon demand, so soon as his wife should attain to her age of twenty one years. A general count for money lent, and then the following averment, viz.*

And although *Frances*, then and now the wife of the said *H.* afterwards, to wit, on the eighteenth day of *January*, in the year of our Lord one thousand seven hundred and thirty two, did attain to the

the age of twenty one years, to wit, at *London* aforesaid, &c. whereof the said *H.* afterwards, the same day and year there had notice; the said *H.* not regarding his said several promises, &c. *Common conclusion.*

From same book.

C. W. complains of *T. C.* being, &c. FOR THAT WHEREAS the said *J.* on the twenty fifth day of *June*, in the year of our Lord one thousand seven hundred and thirty five, at *London* aforesaid, to wit, in the parish of

London.

On note second indorsee against drawer.

in the ward of *Cheap*, made his certain note in writing commonly called a promissory note, subscribed with his own proper hand, bearing date the day and year aforesaid, and then and there delivered the said note to one *R. S.* and thereby promised to pay to the said *R.* or order, the sum of twelve pounds, four shillings, three months after date, for value received; and the said *R.* to whom, or whose order the payment of the said sum of money, contained in the said note which was made after the making of the said note, and before the payment of the said sum of money contained in the said note, or of any part thereof, and also before the said time appointed by the said note for the payment thereof, to wit, on the same day and year aforesaid, at *London* aforesaid, &c. indorsed the said note, his own proper hand being thereto subscribed; and by that indorsement, he the said *R.* appointed the contents of the said note not paid to one *T. C.* or order, and then and there delivered the said note so indorsed to the said *T.* and the said *T.* after the indorsement so made to him as aforesaid, and before the payment of the said sum of money contained in the said note, or of any part thereof, and also before the said time appointed by the said note, for the payment thereof, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, indorsed the said note, his own proper hand being thereto subscribed; and by the said last mentioned indorsement, he the said *T.* appointed the contents of the said note not paid to the said *C.* and then and there delivered the said note so indorsed to the said *C.* of which several indorsements so made as aforesaid, he the said *T.* afterwards,

to

to wit, on the same day and year aforesaid, at *London*, &c. had notice; by reason of which said promises, and by force of the statute in such case made and provided, he the said *J.* became liable to pay to the said *C.* the sum of money contained in the said note, according to the tenor and effect of the said note, and the said several indorsements so made thereon as aforesaid; and being so liable, &c. (promised to pay according to the form and effect of the said note, and the said several indorsements so made thereon as aforesaid).

An indebitatus assumpsit for money had and received, and common conclusion.—When more than one indorsement, always shew all the indorsements, as the last was payable to order.

London.

On note second indorsee against drawer, where he had paid part of the money to the first indorsee before the second indorsement.

J. H. late of *London* aforesaid, was attached to answer unto *W. J. &c.* FOR THAT WHEREAS the said *J.* on the fourteenth day of *September*, in the year of our Lord one thousand seven hundred and twenty eight, at *London*, aforesaid, &c. made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year aforesaid, and then and there delivered the said note to one *T. W.* and thereby promised to pay to the said *J.* or order, the sum of seventeen pounds sterling, on the first day of *July* next ensuing the date of the said note, for value received by the said *J.* and the said *J. W.* to whom or whose order the payment of the said sum of money contained in the said note was to be made, after the making of the said note, and before the payment of the said sum of money contained in the said note, or any part thereof, and also before the said time appointed by the said note for the payment thereof, to wit, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, indorsed the said note, his own proper hand being thereto subscribed; and by that indorsement appointed the contents of the said note to be paid to one *G. S.* or order, and then and there delivered the said note so indorsed to the said *G. S.* whereof the said *J.* after-

afterwards, the same day and year aforesaid, at *London* aforesaid, had notice; and thereupon the said *J.* afterwards, to wit, on the first day of *December*, in the year aforesaid, at *London* aforesaid, &c. paid to the said *G.* ten pounds, in part of payment of the said seventy pounds in the said note contained; and the said *G.* afterwards, and before the payment of the sixty pounds, residue of the said seventy pounds in the said note contained, or any part thereof, to the said *G.* to wit, on the first day of *January*, in the year aforesaid, at *London* aforesaid, &c. indorsed the said note, his own proper hand writing being thereto subscribed; and by the said last mentioned indorsement, he the said *G.* appointed the said sixty pounds, the said residue of the said sum of money contained in the said note, to be paid to the said *W.* and then and there delivered the said note so indorsed to the said *W.* whereof the said *J.* afterwards, the same day and year last above mentioned, at *London* aforesaid, &c. had notice; and by reason of the premises, and by force of the statute in such case made and provided, he the said *J.* became liable to pay the said sixty pounds, the residue of the said sum of money in the said note contained, to the said *W.* according to the tenor and effect of the said note, and the said several indorsements so made thereon as aforesaid; and being so liable, he the said *J.* in consideration thereof, afterwards, the day and year last aforesaid, at *London* &c. undertook, and then and there faithfully promised the said *W.* to pay him the said sixty pounds, residue of the said sum of money contained in the said note, according to the tenor and effect of the said note, and the said several indorsements so made thereon as aforesaid.—*Another count on note generally, without shewing any part of it was paid.—Another count for money had and received, and common conclusion.*

W. R. complains of *H. K.* being, &c. **FOR THAT** *London.*
 WHEREAS one *J. C.* on the fourth day of *February*, On note of
 in the year of our Lord one thousand seven hundred hand, the
 and twenty eight, at *London* aforesaid, in the parish, indorsee
 &c. made his certain note in writing, called a promissory note, subscribed with his own proper hand, against the
 indorser.
 bearing

DECLARATIONS, PLEADINGS, &c.

bearing date the same day and year, and then and there delivered the said note to the said *H.* and thereby promised to pay to the said *H.* or order, four months after date, fifty pounds, value received by the said *J.* and the said *H.* to whom or to whose order the payment of the said sum of money contained in the said note, which was made after the making of the said note, and before the payment of the said sum of money contained in the said note, or of any part thereof, and also before the said time appointed by the said note for payment of the said fifty pounds, to wit, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, indorsed the said note, his own proper hand being thereto subscribed, and by that indorsement the said *H.* appointed the contents of the said note not paid to the said *W.* and then and there delivered the said note so indorsed, to the said *W.* whereof the said *J.* had notice: And the said *W.* doth aver, that the said *J.* hath not paid, or caused to be paid to the said *W.* the said sum of money contained in the said note, or any part thereof, but the payment thereof hath hitherto wholly neglected and refused; whereof the said *H.* after the end of the said four months next after the date of the said note, to wit, on the eighth day of *June*, in the year of our Lord one thousand seven hundred and twenty nine, at *London* aforesaid, in the parish and ward aforesaid had notice; and by reason of the premises, and by force of the statute in such case made and provided, the said *H.* became liable to pay the said sum of money contained in the said note to the said *W.* and being so liable, the said *H.* in consideration thereof afterwards, to wit, the same day and year last above-mentioned, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *W.* to pay him the said sum of money contained in the said note, when he should be afterwards thereto requested.—*A count for money had and received, and common conclusion.*

Drawee
against one
drawer,
where note
was made by

R. J. against *G. T.* WHEREAS the said *G.* and one *J. P.* on the fifteenth day of *May*, in the year of our Lord one thousand seven hundred and twenty four,

four, at aforefaid, made their certain note in two jointly
writing called a promiffory note, fubfcribed with their and feveral-
own proper hand, bearing date the fame day and year, ly.
and then and there delivered the faid note to the faid
R. and by the faid note they the faid G. and J. jointly
and feparately promifed, &c. (*reciting the note*) by reafon
whereof, and by force of the ftatute in fuch cafe made
and provided, the faid G. became liable to pay to the
faid R. the faid fum of money contained in the faid
note, according to the tenor and effect of the faid note;
and being fo liable (*as ufual*).—*Another count on the note
as if made by himfelf; another for money had and received,
and common conclufion.*

S. H. againft J. F. *Three counts or three infimul com-
putaffets for different fums. Fourth count on common note,
as if given by defendant himfelf. Fifth count, AND
WHEREAS afterwards, to wit, on the faid twenty fourth
day of July, in the year of our Lord one thoufand feven
hundred and thirty three aforefaid, one M. F. then
fervant to the faid J. F. and for the faid J. at London
aforefaid, in the parifh and ward aforefaid, made a cer-
tain promiffory note in writing, fubfcribed with her own
proper hand, bearing date the day and year laft aforefaid;
and then and there, for the faid J. delivered the faid
laft mentioned note, to the faid S. and thereby, for the
faid J. promifed to pay (*reciting the note*) by reafon of
which faid laft mentioned premisses, and by force of
the ftatute, the faid J. became liable, &c. according,
&c. (*as ufual*).—*A count in one thoufand feven hundred and
thirty four, for money lent and common conclufion.**

On note
made by de-
fendant's
wife as his
fervant.

*Defendant, a man of weak underftanding, being indebted
to plaintiff on two bonds, and he threatening to arreft him
for it, Mary, defendant's wife, without the priority and
in the abfence of her husband, the defendant, pays plain-
tiff part of the faid money due upon the bond, takes them
up and gives the above note, in her own name, for forty
pounds, the money remaining due, foon after which, Mary,
the wife, died.*

The cafe is
ftated by
defendant's
attorney.

C

Q. Whether

Q. Whether the defendant, in law, is chargeable with payment of said forty pounds?

This opinion seems to be given before the declaration was drawn.

A. If the action is brought upon the note only, I think F. not chargeable by law therewith, because a married woman cannot, by any note or security by her signed or executed, charge the husband to pay the money without his consent; but if plaintiff should declare for money lent to defendant himself, and should give in evidence the money lent as above, then the question will entirely depend upon the circumstances, upon proof at the trial, for the bonds were, in point of law (generally speaking) a satisfaction and extinguishment of the original debt; yet as the bonds were delivered up without actual satisfaction, the circumstances may so come out, that the plaintiff may be at liberty to resort back to the original contract, and maintain his action for the money lent; but in order to that, I think that some fraud ought to be proved, or imposition on plaintiff, by defendant or his wife, and the circumstances ought to be very strong and well proved.

L. Robinson, 8 May, 1735.

This opinion seems to be given before the declaration was drawn.

Drawee against drawer, on a note when it should appear due by a will.

Jane H. against John H. (a common count on the note with his averment after it) And the said Jane doth aver, that afterwards, to wit, on the fifth day of March, in the year of our Lord one thousand seven hundred and nineteen, the said sum of six pounds, specified in the said note, appeared to be due by the will of R. H. her late husband deceased, to wit, at the castle of York aforesaid. Another count on the note (as usual) by reason, &c. became liable to pay the said Jane, the said sum of money contained in the said last mentioned note, upon demand; and being, &c. (and promised to pay it on demand).— Another count for a note given to her to pay six pounds on demand, and common conclusion, and therefore she brings suit, &c. with this, that the said Jane will verify that the said sum of six pounds in the said note, in the said second promise and undertaking contained, specified at the time of the making of that, note appeared to be due to the said Jane, by virtue of the said will of her late husband, &c.

The

The Note.

I promise to pay to my mother Jane H. the sum of six pounds, when it shall appear due by her husband's will, as witness my hand,

John H.

H. R. complains of W. W. being, &c. (a common count on a note of hand payable six months after date for value received). AND WHEREAS the said W. &c. by which said last mentioned note the said W. promised to pay to the said H. or her order, the sum of thirty three pounds, ten shillings, six months after date thereof, for and in consideration of a certain other note before that time made and subscribed by the said W. and now lost, and interest thereon, by which said other note now lost, the said W. had promised to pay to the said H. the sum of twenty eight pounds, ten shillings, the said W. being indemnified from the said note now lost; and the said H. avers, that the said W. was sufficiently indemnified from the said note now lost; by virtue of which said premises, and by force of the said statute, the said W. became, and is liable to pay the said H. the said thirty three pounds, ten shillings, last mentioned, according to the tenor of the said note secondly above mentioned — An insimul computasset, Counts for money lent, money had and received, and common conclusion.

Drawee against drawer, on a promissory note given by defendant, in consideration of his being indemnified from a former note he had given plaintiff, which plaintiff had lost.

T. W. complains of T. K. and S. S. being, &c. FOR THAT WHEREAS the said T. K. and S. S. at the time of the making of the several promises and undertakings hereafter mentioned, and before and afterwards were partners in their commerce, to wit, at London aforesaid, in the parish of, &c. and ward of, &c. AND WHEREAS the said T. K. for himself and the said S. S. his partner, on the day of in the year of our Lord at London aforesaid, in the parish and ward aforesaid, made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year; and then and there, for himself, and the said

Indorsee of two partners, against two partners drawers.

DECLARATIONS, PLEADINGS, &c.

S. his partner, delivered the said note to one F. G. and L. D. (the said F. G. and L. D. being then and there partners in trade) and by that note, he the said T. K. promised to pay to the said F. G. and S. D. by the names of Messrs. F. G. and S. D. or order, six months after date, fifty pounds, value received, for himself and company; and the said F. G. for himself and the said S. D. his partner, after the making of the said note, and before the payment of the said sum of money contained in the said note, or any part thereof, and also before the said time appointed by the said note, for the payment thereof, to wit, the same day and year above-said, at London afore-said, in the parish and ward afore-said, indorsed the said note; his own proper hand being thereto subscribed; and by that indorsement, he the said F. G. for himself and the said S. D. his partner, ordered the contents, &c. to T. W. and then and there, for himself and the said S. D. his partner, delivered the said note so indorsed, to the said T. W. whereof the said T. K. and S. S. afterwards, to wit, on the day and year afore-said, at London afore-said, in the parish and ward afore-said, had notice, and by reason, &c. (*as in other indorsed notes*). *Second count on note, and laid as indorsed by D. for himself and partner. Third count on note, but as indorsed by both G. and D. by their certain indorsement made on the said note last mentioned, and subscribed with the names, as well of him, the said G. as D. appointed the contents, &c. Common conclusion.*

Observations on Notes of Hand.

WHEN you would recover interest on a note, it can only be from the time it becomes payable; or, if it is not payable on demand, you must prove a demand made, and from that time you are intitled to interest, by PARKER, at Reading assizes, 10 March, 1741.

If

If a note be made without any date, or if the date be torn, worn out, or otherwise defaced, so as not to be understood, you may feign a date, and say in the declaration it was made any date a little after you suppose it was made, only observe to omit the following words in the indorsement of the note in the declaration, bearing date the same day and year.

If a note is made payable with interest, set out the note as made; but when you say the defendant is liable to pay, &c. in the promise you take no notice of the word interest, for if he pays the contents of the note, according to the tenor and effect of it, he must pay both principal and interest; for a note, after the time of payment is expired, carries interest as well as a bond, within the 4 and 5 Anne.

If a note be kept so long, that six years or upwards after the date, are past before you bring your action, you must remember to lay your promise within six months, before the teste of your original, else it is bad upon non assump. infra sex annos.

If a certain time be limited for payment of the money, for instance, six months after date, you must mention the time when payable, otherwise it will be bad.

If three persons make a note, jointly and severally, you cannot declare against two of them jointly, the third living, but you may against all three separately or jointly.

A note was given the twenty ninth of October, one thousand seven hundred and thirty four, and by mistake was dated the twenty ninth of October, one thousand seven hundred and thirty five; in the declaration there were three counts, the first upon the note, as dated the twenty ninth of October, one thousand seven hundred and thirty four, only these words left out (bearing date the same day and year). The second was on the note, as made twenty ninth day of October, one thousand seven hundred and thirty four, but bearing date the twenty ninth of October, one thousand seven hundred

Note of hand, how to be drawn when the date be mistaken.

DECLARATIONS, PLEADINGS, &c.

dred and thirty five. The third count was upon the note as if made and dated the twenty ninth of October, one thousand seven hundred and thirty four.

Count for
entering an
office, and
throwing
about pa-
pers and
books.

Philip White, scrivener, complains of *Samuel Benefield* the younger, and *Charles Roe*, being in the custody, &c. in a plea of trespass on the case, for this, That the said *Samuel Benefield* and *Charles Roe*, on the said twenty fifth day of *March*, in the year of our Lord one thousand seven hundred and fifty two, with force and arms, &c. the office at the back of the house of him the said *Philip White* (called) in the parish of *St. Martin's in the Fields*, in the county of, &c. broke and entered, and the windows and shelves there fixed in, and belonging to the said shop or office, did tear and totally destroy, and his papers, cash, books and other valuable things did with violence throw into the court, before the said shop or office, and him the said *Philip White* removed and expelled from his possession aforesaid, to his great damage, &c. And against the peace, &c. By which, he says, he is damaged to the amount of one hundred pounds.

AND WHEREAS ALSO the said *Samuel Benefield* and *Charles Roe*, afterwards, (to wit) upon the same day and year aforesaid, at the shop or office, in the parish and county aforesaid, did, with force and arms, his the said *Philip's* papers, cash, books, and other valuable things belonging to the said *Philip*, and which were then in the said office, with violence threw into the court, wherein is the said shop or office, whereby the same were greatly damaged, and the said *Philip* thereby prevented from carrying on his business, by which, he says, that he is damaged to the amount of another one hundred pounds.

AND WHEREAS ALSO, the said *Samuel Benefield* and *Charles Roe*, afterwards, that is to say, on the said twenty fifth day of *March*, in the year aforesaid, did, with force and arms, &c. the apartment or lodging room of him, the said *Philip White*, in the parish and county aforesaid, broke and entered, and him the said *Philip*

Philip White expelled and removed from his possession aforesaid, to his great damage, &c. and against the peace, &c. by which, he says that he is damnified to the amount of another one hundred pounds.

AND WHEREAS ALSO the said (plaintiff) afterwards, to wit, on the same day and year, at aforesaid, in the county aforesaid, had lent and delivered to the said (defendant) at his special instance and request four trusses of hay, of the value of six shillings and fourpence, and four bushels of oats, of the value of six shillings; he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at aforesaid in the county aforesaid, took upon himself, and then and there faithfully promised the said plaintiff, that he, the said defendant, four other trusses of hay, and four other bushels of oats, to the said plaintiff, when afterwards he should be thereto required, would well and faithfully pay and content.

A count for lending four trusses of hay and four bushels of oats.

Yet the said *A. B.* in his life time, and the aforesaid *Bridget*, after the death of the said *A. B.* whilst sole, and the aforesaid *William* and *Bridget* after their intermarriage, the promises and undertakings of the said *A. B.* in his life time, in form aforesaid made, in no wise regarding, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *John* (plaintiff), in this particular, have not paid, neither hath any of them yet paid the said several sums of money, or any part thereof, to the said *John*, or in any wise satisfied him for the same (although to do this, the said *A. B.* in his life time was often, and the said *Bridget*, after the death of the said *A. B.* whilst she was sole was often, and the said *William* and *Bridget*, after their intermarriage, to wit, on the day of in the year of our Lord at aforesaid, in the county aforesaid, were by the said *John* requested) but they have hitherto altogether refused to pay the same, and the said *William* and *Bridget* still do refuse to pay to the said *John*,

A conclusion against a man and his wife who was an executrix before she married, for a debt of the testator.

John, to the damage of him the said *John*, twenty pounds, and thereupon he brings this suit, &c.

Against two
defendants.

Yet the said *Samuel* and *Benjamin* in no wise regarding their several promises and undertakings aforesaid, in form aforesaid made, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *Edward* in that behalf, have not, nor hath either of them paid the said several sums of money, or any part thereof, to the said *Edward* (although they have been often thereto requested by the said *Edward*, at aforesaid, in the aforesaid) but they have hitherto altogether refused, and still do refuse to pay the same to the said *Edward*, to the damage of the said *Edward* of twenty pounds, and thereupon he brings his suit, &c.

Against one
defendant.

Warren.

Yet the said *George* not regarding his several promises and undertakings aforesaid, in form aforesaid made, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said *Henry* in this particular, hath not yet paid the said several sums of money, or any part thereof to the said *Henry* (although, to do this, he the said *George*, afterwards, to wit, in the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, by the said *Henry* was requested) but he to pay the same to him, hitherto hath wholly refused, and still doth refuse to the said *Henry* his damage of twenty pounds, and therefore he brings his suit, &c.

For the two
last mentioned
promises.

Hardcastle.

Yet the said *John Heathen*, not regarding his said two last mentioned promises and undertakings made in form aforesaid, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *James Smith* in this respect, has not yet paid to the said *James Smith* the said two last mentioned sums of money, or any part thereof (although the said *John Heathen*, afterwards, to wit, the first day of *January*, in the year above said, at *N.* aforesaid, was requested by the said *James Smith* to pay him the same) but has hitherto refused, and still refuses to pay the

the same to the said *James Smith*, to the damage of the said *James Smith* of forty pounds, and thereupon he brings suit, &c.

Yet the said *W. P.* not regarding his said two several last mentioned promises and undertakings, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *William, Abraham, Henry, John* and *Edward*, in the life time of the said *Edward*; and the said *William, Abraham, Henry, and John*, after the death of the said *Edward* in this particular, have not yet paid the said several sums of money mentioned in the said two several last mentioned promises and undertakings, or any part thereof, to them or any of them (although to do this, he the said *W. P.* often afterwards, by the said *William, Abraham, Henry, John* and *Edward*, in the life time of the said *Edward*, and by the said *William, Abraham, Henry* and *John*, after the death of the said *Edward*, to wit, on the said day of in the said year of our Lord at afore said was requested) but he to pay the same to them or any of them hath hitherto wholly refused, and to pay the same to the said *William, Abraham, Henry* and *John*, or any of them, still doth refuse to the said *William, Abraham, Henry, and John* their damage of twenty pounds, and therefore they bring their suit, &c.

By three surviving partners for the two last mentioned promises, *Warren.*

Nevertheless the said *Angel* in his life time, and the afore said *Samuel*, after the death of the said *Angel*, not regarding the several promises and undertakings afore said, in form afore said made, but contriving and fraudulently intending, the said *Edmund* in his life time, and the said *Mary* after the death of the said *Edmund*, in this behalf craftily and subtilly to deceive and defraud, the afore said several sums of money, or any part thereof to the said *Edmund* in his life time, or to the afore said *Mary*, after the death of the said *Edmund*, hath not paid, neither hath either of them yet paid the same (although to pay the same, the afore said *Angel* in his life time, by the said *Edmund* in his life time oftentimes, and the said *Samuel*, after

By an executrix against an executor.

after the death of him the said *Angel*, to wit, on the first day of *April*, in the year of our Lord one thousand seven hundred and thirty seven, at _____ in the county aforesaid, by the said *Mary* were required) but to pay the same to them or either of them they have hitherto altogether refused; and to pay the same to the said *Mary*, the said *Samuel* still doth refuse, to the damage of the said *Mary* twenty pounds, and therefore she brings this suit, &c. And the said *Mary* brings here into court the letters testamentary of the aforesaid *Edmund*, whereby it sufficiently appears to the court here, that the said *Mary* is executrix of the said will, and hath administration thereof, &c.

By an administrator.

Yet the said *John*, in no wise regarding his several promises and undertakings in form aforesaid made, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *Elizabeth* in her life time, and the said *James*, after the death of her the said *Elizabeth* (to which said *James*, administration of all and singular the goods and chattels, rights and credits, which were belonging to the said *Elizabeth* at the time of her death, after the death of the said *Elizabeth*, to wit, on the nineteenth day of *November*, in the year of our Lord one thousand seven hundred and thirty five, at *London* aforesaid, in the parish and ward aforesaid, by *William*, by divine providence, Archbishop of *Canterbury*, Primate of all *England*, and Metropolitan in due form of law, was granted) in this behalf, hath not yet paid the said several sums of money, or any part thereof, to the said *Elizabeth* in her life time, or to the said *James* after the death of the said *Elizabeth*, (although often requested) but to pay the same to them or either of them, the said *John* hath hitherto altogether refused, and to pay the same to the said *James* still doth refuse, to the said *James* his damage of one hundred pounds, and therefore he brings this suit, &c. and he brings here into court the letters of administration of the said Archbishop, which testify to the court here, the commission of the administration aforesaid to the said *James*, in form aforesaid, the date whereof is the day and year in that behalf above mentioned.

Cape v. Sewper.

Hab. Rep.

ACCOUNT

A C C O U N T.

To wit. } **R** *R.* late of, &c. and *J. D.* late of, &c. were summoned to answer *J. R.* in a plea, that they render to him their reasonable account of the time during which they were bailiffs of him the said *J. R.* in *M. B.* and whereupon the said *J. R.* by his attorney, says, THAT WHEREAS the said *R.* and *J.* on the twenty fifth day of *March*, in the year of our Lord one thousand seven hundred and thirty one, and from thenceforth until the first day of *April*, in the year of our Lord one thousand seven hundred and thirty five, at *M. B.* aforesaid, were bailiffs of the said *J. R.* of certain closes, called *Benham Cow Leazes*, in *M. B.* aforesaid, with the appurtenances of them the said *J. R.* and *J. D.* and for all that time had the care and management thereof, and received the issues and profits thereof for the common benefit and profit of the said *J. R.* and *J.* to render a reasonable account thereof to the said *J. R.* when they should be thereunto required; and during that time, at *M. B.* aforesaid, were the bailiffs of the said *J.* and had the care and management of great quantities of peat and peat ashes, and hay, of the said *J. R.* and *J.* for the common benefit and profit of the said *J. R.* and *J.* to render a reasonable account thereof to the said *J.* when they should be thereunto requested; yet the said *R.* and *J.* (although often requested) have not, nor hath either of them rendered to the said *J.* a reasonable account of the premises or any part thereof, but have hitherto altogether denied, and still do deny to render the same to the said *J.* whereby he says that he is injured, and hath damage to the value of fifty pounds, and thereupon he brings suit, &c.

A declaration by one partner against two for not acting with him.

Hardcastle. Willoughby against Small. 24.

See the plea to this, in Title Pleas, &c.

P. T.

Against a
bailiff who
had the care
of divers
goods of
plaintiff's to
render an
account
thereof.
*Serjeant
Draper.*

P. T. complains of *J. B.* being, &c. of a plea that he render to him a reasonable account during the time in which he was bailiff of the said *P.* for this, THAT WHEREAS the said *J.* had been bailiff of the said *P.* at in the county aforesaid, from the twenty-ninth day of *July*, in the year of our Lord one thousand seven hundred and thirty seven, until the twenty sixth day of *December* in the same year, and during all the time aforesaid had the care and disposal of divers goods and merchandizes of the said *P.* to wit, of six half barrels of white herrings, four quarter barrels of salmon, and one half barrel of salmon for all the time aforesaid, to merchandize and to make profit thereof for the said *P.* and to render him a reasonable account thereof when afterwards he should be thereunto requested; yet the said *J. B.* (although often requested) hath not yet rendered to the said *P.* his reasonable account thereof, but hath hitherto refused, and still doth refuse to render the same to him; whereby he says he is prejudiced, and hath damage to the value of forty pounds, and thereupon he brings suit, &c.

C A S E.

JANE W. widow, administratrix of all and singular the goods and chattels, rights and credits which were belonging to S. W. her late husband at the time of his death, who died intestate, complains of J. L. being in the custody of the marshal, &c. FOR THAT WHEREAS, at the time of making the several promises and undertakings hereafter mentioned, and before and afterwards, they the said J. and one M. L. now deceased, in the life time of the said M. were persons trading by way of merchandizing, and using commerce within this kingdom of *England*, to wit, at R. in the county aforesaid. And the said J. and M. then, and before, and afterwards, were there partners in their said trade and commerce, which said M. the said J. hath survived.

A declaration by an administratrix on a note against the surviving partner.
Warren.

AND WHEREAS the said J. on the fifth day of September, in the year of our Lord one thousand seven hundred and twenty nine, and in the life time of the said M. at R. aforesaid, for himself and the said M. his said partner, made his certain note in writing, commonly called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year, and then and there, for himself and the said M. his said partner, delivered the said note to the said S. in his life time, and thereby for himself and the said M. his said then partner, promised to pay to the said S. or order seventy eight pounds on demand, for value received; and by reason thereof, and by force of the statute in such case made and provided, the said J. and M. in the life time of the said M. became liable to pay to the said S. in his life time, the said sum of money contained in the said

said note according to the tenor and effect of the said note. And being so liable, they the said *J.* and *M.* in the life time of the said *M.* in consideration thereof, afterwards, to wit, the same day and year abovesaid, at *R.* abovesaid, in the county abovesaid, undertook, and then and there faithfully promised the said *S.* in his life time, to pay him the said sum of money contained in the said note, according to the tenor and effect of the said note.

AND WHEREAS afterwards, to wit, on the twentieth day of *September*, in the year of our Lord one thousand seven hundred and twenty nine, at *R.* abovesaid, and in the life time of the said *M.* he the said *J.* for himself and the said *M.* his partner, made his certain other note.—*And then a count for money lent.*

A declaration
on a note
of indemnity.
Warren.

London, } *J. W.* late of, &c. was attached to answer *W.*
to wit. } *H.* in a plea of trespass upon the case, &c.
And whereupon the said *W. H.* by his attorney,
complains, THAT WHEREAS the said *W. H.* on the
twenty eighth day of *February*, in the year of our Lord
one thousand seven hundred and thirty nine, at *London*
abovesaid, to wit, in the parish of in the ward of
Cheap, at the special instance and request of the said *J.*
W. had made a certain note in writing, called a promissory
note, subscribed with the hand writing of him the
said *W. H.* bearing date the day and year abovesaid, and
had delivered the said note to the said *J. W.* and thereby
as if for value received, had promised to pay to the said
J. W. or order, one hundred pounds, two months after
date of the said note, whereby, and by force of the
statute in such case made and provided, the said *W. H.*
had become liable to pay the said *J. W.* or his order,
the said sum of money according to the form and effect
of the said note; and in consideration thereof, he the
said *J. W.* afterwards, to wit, on the same day and year
abovesaid, at *London* abovesaid, in the parish and ward
abovesaid, undertook, and then and there faithfully prom-
ised the said *W. H.* to indemnify him the said *W. H.*
from the said note, and all charges that should accrue
from it. And the said *W. H.* further saith, that the
said

aid *J. W.* after the making of the said note, to wit, on the said twenty eighth day of *February*, in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, indorsed the said note subscribed with his the said *J. W.*'s own hand, and by that indorsement he the said *J. W.* appointed the contents of the said note to be paid to one *J. C.* yet the said *J. W.* not regarding his aforesaid promise and undertaking, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *W. H.* in this particular, hath not in any way indemnified the said *W. H.* from the said note, by paying to the said *J. C.* the sum of money contained in the said note, or otherwise howsoever (although to this the said *J. W.* afterwards, to wit, on the first day of *May*, in the year of our Lord one thousand seven hundred and thirty five, and often afterwards, at *London* aforesaid, in the parish and ward aforesaid, was requested by the said *W. H.*) but he the said *J. W.* to perform his said promise in this particular, then and always afterwards there refused, and still refuseth. Whereupon the said *W. H.* afterwards, to wit, on the first day of *July*, in the year of our Lord one thousand seven hundred and thirty six, at *London* aforesaid, in the parish and ward aforesaid, to discharge himself from the said note, and to prevent any suit at law being commenced against the said *W. H.* thereon, was forced and obliged to pay unto the said *J. C.* the said sum of one hundred pounds contained in the said note, and also the sum of five pounds, four shillings, and ten pence, for interest thereof then due thereon to the said *J. C.*

AND WHEREAS the said *J. W.* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was indebted, &c. (a common count for money laid out and expended) yet the said *J. W.* not regarding his said last mentioned promises and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. H.* in this particular, hath not yet paid the said last mentioned sum of money, or any part thereof to the said *W. H.* (although often requested) but to pay the same to the said *W. H.* hitherto hath,
and

DECLARATIONS, PLEADINGS, &c.

and still doth wholly refuse to the said *W.* his damage of one hundred and thirty pounds, therefore he brings his suit.

A declarati-
on on a for-
eign bill of
exchange by
drawer
against ac-
ceptor.

Warren.

Southampton, } *T. H.* late of *R.* &c. was attached to
to wit. } answer *J. K.* of a plea of trespass on the
case, &c. And thereupon the said *J.* by his
attorney, complains, THAT WHEREAS there now is,
and from time immemorial hitherto has been an ancient
and laudable custom used and approved of amongst
merchants, and other persons residing, trading, and
using commerce within this kingdom, namely, that if
any merchant, or other person residing, trading, and
using commerce in parts beyond the seas, should make
any bill of exchange in writing subscribed with his
own hand, and should direct such bill to any mer-
chant, or other person residing, trading, and using
commerce within this kingdom, and by such bill
should require such person, to whom such bill should be
directed, to pay or cause to be paid to any merchant,
or other person residing, trading, or using commerce
within this kingdom, or order any sum of money men-
tioned in such bill, at any time mentioned in such bill,
and by such bill appointed for payment thereof; and if
such person to whom such bill should be so directed,
should accept such bill, then such person to whom such
bill should be so directed, accepting such bill, should be
liable, and is and was for all the time aforesaid, li-
able, and is and was for all the time aforesaid, been used
and accustomed to be liable to pay such sum of money
mentioned in such bill, to such person mentioned in such
bill, and to whom the money mentioned in such bill
should, by such bill be appointed to be paid, at such
time as by such bill such sum of money should be ap-
pointed to be paid; and the said *J.* further saith, that at
the time of making the bill of exchange hereafter men-
tioned, and at the several other times hereafter mention-
ed, one *S. F.* was a merchant, or other person resid-
ing, trading, and using commerce in parts beyond the
seas, to wit, at *N.* in *Newfoundland*; and the said *J.*
K. and *T. H.* were persons residing, trading, and
using

using commerce within this kingdom, to wit, at *R.* in the county of *Southampton* aforesaid; and being so resident and trading and using commerce as aforesaid, the said *S.* on the third day of *November*, in the year of our Lord one thousand seven hundred and thirty, in parts beyond the seas, at *N.* aforesaid, in *Newfoundland*, according to the aforesaid custom, made his certain bill of exchange in writing, subscribed with his own hand, bearing date the same day and year, and then and there directed the said bill to the said *T. H.* by the name of *Mr. T. H.* merchant, in *R.* and by the said bill requested the said *T. H.* forty days after sight of that his second bill of exchange (first not paid) to pay, or cause to be paid to the said *J.* or order, the sum of nine pounds sterling for value received in fish, and to place it to the account of the ship *Industry*, as by advice from the said *S.* which said bill the said *T. H.* afterwards, to wit, on the first day of *February*, in the year aforesaid, at *R.* aforesaid, upon sight thereof, accepted according to the aforesaid custom, and by reason of the promises, and according to the aforesaid custom, he the said *T. H.* became liable to pay to the said *J.* the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and of his acceptance thereof, and being so liable, he the said *T. H.* in consideration thereof, afterwards, to wit, the same day and year last aforesaid, at *R.* aforesaid, undertook, and then and there faithfully promised the said *J.* to pay him the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and of his acceptance thereof, *with a count for money had and received to plaintiff's use, and then, YET THE AFORESAID, &c.*

To wit, *R. N.* complains of *A. S. &c.* FOR THAT WHEREAS the said *A.* on the sixth day of *June*, in the year of our Lord one thousand seven hundred and thirty five, at *P.* in the county aforesaid, was indebted to the said *R.* in five pounds of lawful money of *Great-Britain*, for horse meat, stabling and attendance, by the said *R.* for a certain gelding of the said *A.* before that time

A declaration for horse meat, stabling and attendance. *Warren.*

D

found

DECLARATIONS, PLEADINGS, &c.

found and provided, and to the said gelding given and allowed, at the special instance and request of the said *A.* and being so indebted, he the said *A.* in consideration thereof, afterwards, to wit, on the same day and year, at *P.* aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *R.* to pay him the said sum of money when afterwards he should be thereto requested.

AND WHEREAS afterwards, to wit, on the same day and year aforesaid, at *P.* aforesaid, in the county aforesaid, in consideration that the said *R.* at the like special instance and request of the said *A.* had before that time found and provided for, and allowed to a certain other gelding of the said *A.* other horse meat, stabling and attendance, he the said *A.* undertook, and then and there faithfully promised the said *R.* to pay him so much money as he therefore reasonably deserved to have of the said *A.* other five pounds of like lawful money, to wit, at *P.* aforesaid, in the county aforesaid, whereof the said *A.* then and there had notice.

AND WHEREAS the said *A.* afterwards, to wit, on the same day and year, at *P.* aforesaid, in the county aforesaid, was indebted unto the said *R.* in other five pounds of like lawful money, and other horse meat, stabling and attendance, by the said *R.* at the like special instance and request of the said *A.* for a certain gelding of one *R. C.* before that time found and provided, and to the said last mentioned gelding allowed: And being so indebted, he the said *A.* in consideration thereof, afterwards, on the same day and year, at *P.* aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *R. N.* to pay him the said sum of money last mentioned, when he should be thereto afterwards requested.

AND WHEREAS afterwards, to wit, on the same day and year, at *P.* aforesaid, in the county aforesaid, in consideration that the said *R. N.* at the like special instance and request of the said *A.* had before that time found and provided for, and allowed to a certain other

other gelding of the said *R. C.* other horse meat, stabling and attendance, he the said *A.* undertook, and then and there faithfully promised the said *R. N.* to pay him so much money as he therefore reasonably deserved to have. And the said *R. N.* doth aver, that he therefore reasonably deserved to have of the said *A.* other five pounds of like lawful money, to wit, at *P.* aforesaid, in the county aforesaid, whereof the said *A.* then and there had notice. YET THE AFORESAID, &c.

To wit, *J. S.* complains of *A. S.* FOR THAT WHEREAS the said *A.* on the day of in the year of our Lord one thousand seven hundred and thirty four, at *N.* in the county aforesaid, was indebted unto the said *J.* (the said *J.* then, and for divers years then last past, being an apothecary; and the art and business of an apothecary for all the time aforesaid using and exercising) in twenty pounds of lawful money of Great Britain, for the work and labour, care and diligence of the said *J.* at the special instance and request of the said *A.* before that time done and performed, and bestowed in and about the healing and curing of the said *A.* of divers diseases, sicknesses and maladies under which he then laboured and languished; and for divers medicines, plaisters, physick, and other necessary things before that time provided, administered and applied by the said *J.* at the like special instance and request of the said *A.* in that particular; and being so indebted, he the said *A.* in consideration thereof, afterwards, to wit, the same day and year, at *N.* aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *J.* to pay him the said sum of money when he should be thereto afterwards requested.

AND WHEREAS, afterwards, the same day and year, at *N.* aforesaid, in the county aforesaid, in consideration that the said *J.* being then an apothecary, as aforesaid, and using the same art and business, at the like special instance and request of the said *A.* had before that time done, performed, and bestowed other his work and labour, care and diligence in and about the

A declaration
on for an a-
pothecary's
bill, and vi-
siting defend-
ant in his
illness.

Warren.

healing and curing of the said *A.* of divers other diseases and sicknesses and maladies under which he then laboured and languished, and had in that particular, at the like special instance and request of the said *A.* provided, administered and applied certain other medicines, plaisters, physic, and other necessary things, he the said *A.* undertook, and then and there faithfully promised the said *J.* to pay him so much money as he therefore reasonably deserved to have; and the said *J.* doth aver, that he therefore reasonably deserved to have of the said *A.* other twenty pounds of like lawful money; to wit, at *N.* aforesaid, in the county aforesaid, whereof the said *A.* then and there had notice.

AND WHEREAS the said *A.* afterwards, to wit, the same day and year, at *N.* aforesaid, in the county aforesaid, was indebted unto he said *J.* in other twenty pounds of like lawful money, for the work and labour, care and diligence of the said *J.* as an apothecary, at the like special instance and request of the said *A.* before that time done, performed, and bestowed in visiting the said *A.* then languishing and labouring under divers other diseases, sicknesses and maladies, and also for divers other medicines, physic, and other necessary things before that time provided, administered, and applied by the said *J.* on that occasion, at the like special instance and request of the said *A.* And being so indebted, he the said *A.* in consideration thereof, afterwards, to wit, the same day and year, at *N.* aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *J.* to pay him the said sum of money last mentioned, when he should be thereto afterwards requested, *with a quantum meruit to this count.*
YET THE AFORESAID, &c.

A declaration by the assignees of a bankrupt, in which is recited a declaration for carriage of goods by water.

Old Agar.

To wit, *H. G.* and *J. T.* assignees of the debts, goods and chattels of *R. S.* a bankrupt, within the true intent and meaning of the several statutes made and provided concerning bankrupts, complain of *E. W.* in the custody, &c. FOR THAT WHEREAS the said *E. W.* the

day of
in the year of our Lord one thousand seven

seven hundred and thirty four, at *K.* in the county aforesaid, was indebted to the said *N. S.* before he became a bankrupt, in the sum of nine pounds of lawful money of this kingdom, for the freight, carriage and conveyance of divers goods, wares and merchandizes, of the said *E.* in and on board the barges and boats of him the said *R.* and by him the said *R.* (before he became a bankrupt) for the said *E.* and at his special instance and request from the city of *L.* to the town of *N.* in the county of *B.* and from the said town of *N.* in the said county of *B.* to the same city of *L.* before that time carried and transported; and being so indebted, the said *E.* in consideration thereof, afterwards, to wit, on the same day and year above, at *K.* aforesaid, undertook, and to the said *R.* (before he became a bankrupt) then and there faithfully promised that he the said *E.* would well and truly pay and satisfy the said nine pounds, to the said *R.* when he should be thereunto afterwards requested.

AND WHEREAS the said *R.* before he became a bankrupt) at the like special instance and request of the said *E.* had carried, transported and conveyed for the said *E.* divers other goods, wares and merchandizes in and on board the boats and barges of him the said *R.* (before he became a bankrupt) from the aforesaid town of *N.* in the county of *B.* aforesaid, to the said city of *L.* and from the said city of *L.* to the said town of *N.* the said *E.* in consideration thereof, afterwards to wit, the same day and year abovesaid, at *K.* aforesaid, took upon himself and to the said *R.* (before he became a bankrupt) then and there faithfully promised that he, the said *E.* would well and truly pay all such sums of money to the said *R.* for the carriage and conveyance of the goods, wares and merchandizes last mentioned, when afterwards he should be thereunto requested. And the said *H.* and *J.* in fact say, that the said *R.* (before he became a bankrupt) reasonably deserved to have of the said *E.* for the freight, carriage and conveyance of the goods, wares and merchandizes last mentioned, other nine pounds of like lawful money, whereof the said *E.* afterwards, to wit, the day and year aforesaid, at *K.* aforesaid had notice.

AND

DECLARATIONS, PLEADINGS, &c.

AND WHEREAS, &c. (*Another count for work, labour, care and industry by the bankrupt, before he became a bankrupt, for the defendant in his business and affairs, and a quantum meruit to that count.*

N. B. The assignees of the bankrupt aver, that the bankrupt (before he became a bankrupt) reasonably deserved to have, &c. Nevertheless the said *E.* not regarding his several promises and undertakings aforesaid, but contriving, and fraudulently intending to deceive and defraud the said *R.* before he became a bankrupt, and the said *H.* and *J.* (assignees of the debts of the said *R.* after he became a bankrupt) in this behalf hath not paid the said several sums of money, or any part thereof, either to the said *R.* before he became a bankrupt, or to the said *H.* and *J.* or either of them, since the said *R.*'s bankruptcy, to which said *H.* and *J.* all and singular the goods and chattels, debts and credits of the said *R.* the bankrupt, were in due manner assigned, according to the form of the several statutes made and provided, concerning bankrupts by indenture bearing date the third day of *November*, in the year of our Lord one thousand seven hundred and thirty three, at *K.* aforesaid, and now brought here into court, under the hands and seals of *E. B. Esq; G. N. and J. B. gent.* the commissioners, by virtue of a commission of bankruptcy, under the great seal of our lord the King, against the said *R. S.* directed to them the said *E. B. G. N. and J. B.* and also to *W. R. Esq; R. W. gent.* although the said *E.* after the assignment aforesaid, to wit, the first day of *April*, in the year of our Lord one thousand seven hundred and thirty four, and often afterwards at *K.* aforesaid was requested by the said *H.* and *J.* to pay the same) but hath hitherto refused, and still doth refuse to pay the same to the said *H.* and *J.*

AND WHEREAS ALSO the said *E.* the first day of *April*, in the year of our Lord one thousand seven hundred and thirty four, at *K.* in the county aforesaid was indebted to the said *H.* and *J.* as assignees of the debts of the said *R.* a bankrupt as aforesaid, in the sum of nine pounds of lawful money of *Great Britain*, &c.

reciting

reciting the first count in the name of the assignees instead of the bankrupt, with a quantum meruit after the same manner; vide second count for that; and two more counts like the third and fourth after the same manner. Nevertheless the said E. not regarding his said several promises and undertakings aforesaid, but contriving and fraudulently intending to deceive and defraud the said R. before he became a bankrupt, and the said H. and J. (assignees of the debts of the said R. after he became a bankrupt as aforesaid) to which said H. and J. and the said E. B. G. N. and J. B. the said thirtieth day of November, in the year of our Lord one thousand seven hundred and thirty three, aforesaid, at K. aforesaid, by their writing abovementioned, according to the form of the several statutes made and provided concerning bankrupts, did in due manner assign the goods and debts of the said R. S. a bankrupt, in this behalf, hath not paid the several sums of money, or any part thereof, either to the said R. before he became a bankrupt, or to the said H. and J. or either of them, as assignees of the debts of the said R. as aforesaid, since he became a bankrupt, (although the said E. hath been often requested so to do) but hath hitherto refused, and still doth refuse to pay the same to the said H. and J. wherefore the said H. and J. as assignees of the debts of the said R. (being a bankrupt as aforesaid) say that they are prejudiced and damnified to the value of sixty pounds, and therefore they bring this suit.

Pledges.

To wit, E. C. spinster, complains of J. M. being, &c. FOR THAT WHEREAS on the twenty eighth day of May, in the year of our Lord one thousand seven hundred and thirty three, at W. in the county aforesaid, he the said J. being then sole and unmarried, in consideration that the said E. C. (she being also then sole and unmarried) at the special instance and request of the said J. then and there agreed, and undertook, and faithfully promised the said J. that she the said E. C. would take the said J. to her husband; he the said J. undertook, and then and there faithfully promised the said

A declaration on a marriage contract.

Warren.

DECLARATIONS, PLEADINGS, &c.

said *E. C.* that he the said *J.* would take to his wife, the said *E. C.* and although the said *E.* confiding in the aforesaid promise and undertaking of the said *J.* hath always from thence hitherto refused to contract matrimony with any other man whatsoever, and still remains, and is sole and unmarried, and always from the making of the promises and undertakings aforesaid, whilst the said *J.* continued single and unmarried, was ready and offered to take to husband him the said *J.* to wit, at *W.* aforesaid, in the county aforesaid, yet the said *J.* not in the least regarding his aforesaid promise and undertaking, but craftily and subtilly contriving and intending to deceive and defraud the said *E. C.* in this particular, hath not yet taken to his wife the said *E. C.* (although often requested) but hath altogether refused so to do.

And afterwards, that is to say, on the sixth day of *February*, in the year of our Lord, one thousand seven hundred and thirty three aforesaid, at *W.* aforesaid, in the county aforesaid, took to his wife one *E. H.* contrary to his aforesaid promise and undertaking.

AND WHEREAS afterwards, on the said twenty eighth day of *May*, in the year of our Lord, one thousand seven hundred and thirty three aforesaid, at *W.* aforesaid, in the county aforesaid, he the said *J.* being then sole and unmarried, in consideration that the said *E. C.* (she being also then sole and unmarried) at the like special instance and request of the said *J.* had then and there agreed, and undertaken and faithfully promised the said *J.* that she the said *E. C.* would take the said *J.* to her husband on the feast day of *St. Michael* the archangel then next following, he said *J.* undertook, and then and there faithfully promised the said *E. C.* that he the said *J.* would take to his wife the said *E. C.* on the feast day of *St. Michael* the archangel then next following, to wit, at *W.* aforesaid, in the county aforesaid; and although the said *E. C.* confiding in the said last mentioned promise and undertaking of the said *J.* hath always, from the time of the making of the said last mentioned promise and undertaking of the said *J.* hitherto refused to contract matrimony with any other

other man whattsoever, and still remains, and is sole and unmarried, and on the said feast day above mentioned, was ready and offered to take to her husband him the said *J.* to wit, at *W.* aforesaid, in the county aforesaid; and always, from the time of making the said last mentioned promises and undertakings, whilst the said *J.* continued single and unmarried, was ready, and offered to take to her husband him, the said *J.* to wit, at *W.* aforesaid, in the county aforesaid; yet the said *J.* not in the least regarding his said promise and undertaking last mentioned, but craftily and subtilly contriving and intending to deceive and defraud the said *E. C.* in this particular, did not on the said feast day of *St. Michael* the archangel above mentioned, or at any other time before then, or afterwards, take to his wife the said *E. C.* (although to do this the said *J.* on the said feast day of *St. Michael* the archangel, and often afterwards, at *W.* aforesaid, in the county aforesaid, by the said *E. C.* was requested) but he the said *J.* hath hitherto altogether refused so to do. And afterwards, that is to say, on the sixth day of *February*, in the year of our Lord one thousand seven hundred and thirty three, at *W.* aforesaid, in the county aforesaid, took to his wife the said *E. H.* contrary to his said promise and undertaking last mentioned, to the said *E. C.* her damage of two hundred pounds, and thereupon she brings her suit.

—To wit, *W. M.* complains of *E. W. &c.* FOR THAT WHEREAS the said *William*, on the eleventh day of *April*, in the year of our Lord one thousand seven hundred and thirty two, at _____ in the county aforesaid, and long before had used and exercised the business or employment of a coachman; and the said *E.* being master or overseer of the *W.* stage coach, a speech was then and there had and moved between the aforesaid *William* and *E.* of and concerning the business of a coachman, and the exercise thereof, to be done and performed by the said *William*, he the said *E.* in consideration that the said *William*, at the special instance and request of the said *E.* would drive the said coach, from the

A declaration by a coachman for driving a stage coach, against the master for remainder of his wages, part of it, being paid.

the said city of *W.* in the county of *Southampton* aforesaid, to the town of *F.* in the county of *Surry*, and back from the said town of *F.* to the said city of *W.* and do and perform the usual business of a coachman, the day and year aforesaid, at aforesaid, took upon himself, and then and there faithfully promised the said *William*, that he the said *E.* would well and truly pay to the said *William*, the sum of three shillings and six pence for every week during the time that he should drive the said stage coach, and do and perform the business of a coachman. And the said *William* in fact says, that he relying upon the faithful promise and undertaking of the said *E.* in this behalf did drive the stage coach of the said *E.* from the said city of *W.* in the said county of *Southampton*, to the town of *F.* in the said county of *Surry*, and back from the town of *F.* to the said city of *W.* and did do and perform the business of a coachman, for eighty weeks, to wit, from the said eleventh day of *April*, which was in the year of our Lord one thousand seven hundred and thirty two, to the twenty sixth day of *October*, in the year of our Lord one thousand seven hundred and thirty three, which after the rate aforesaid, during the time aforesaid, amounted unto the sum of fourteen pounds. And although the said *E.* afterwards, to wit, the day and year last mentioned, at *W.* aforesaid, paid five pounds parcel of the said fourteen pounds, to the said *William*, nevertheless the said *E.* not regarding his said promises and undertakings as to nine pounds, residue of the said fourteen pounds, but contriving, and fraudulently intending to deceive and defraud the said *William* in this behalf, hath not paid the said nine pounds, residue of the said fourteen pounds, or any part thereof to the said *William*, according to the agreement aforesaid, but has hitherto refused, and still doth refuse to pay the said nine pounds, residue of the said fourteen pounds, to the said *William*. — Another count for work, labour and service of a coachman, and a quantum meruit to that count. Another count for work and labour, in and about defendant's affairs, with a quantum meruit to that also. YET the aforesaid, &c.

T. H.

T. H. late, &c. was attached to answer *J. F.* of a plea of trespass upon the case, &c. And whereupon the said *J.* by his attorney, complains, THAT WHEREAS upon the sixth day of *February*, in the year of our Lord one thousand seven hundred and thirty two, at in the said county, a certain discourse was moved, and had between the said *J.* and also *S. N.* then a single woman and unmarried, and the said *J.* of and concerning a marriage then by the said *J.* proposed, and desired, and promoted to be had between the said *S.* and one *R. B.* then a single man and unmarried; and thereupon, in consideration that the said *S.* at the special instance and request of the said *T.* would marry and take to husband the said *R.* he the *T.* did then and there take upon himself, and promise unto him the said *J.* for, and on the behalf of the said *S.* he being a person then and there by her nominated, for and as a trustee in this behalf, for her the said *S.* and likewise approved and accepted of for this purpose, by the said *P.* that he, the said *T.* would pay to the said *J.* the sum of twenty pounds, upon demand, to buy the furniture of a house, for the use of the said *S.* when married to the said *R.* and if the said *R.* should go from the said *S.* to pay to her the sum of five pounds, to subsist when she should be brought to bed. And the said *J.* in fact saith, that the said *S.* giving credit to the aforesaid promise and undertaking of the said *T.* did afterwards, to wit, the same day, year and place, at the special instance and request of the said *T.* marry, and take to husband the said *R. B.* whereof the said *T.* afterwards, to wit, the same day, year and place had notice, and was then and there requested by the said *J.* to pay him the said twenty pounds for the purpose aforesaid. Nevertheless the said *S.* not regarding his said undertaking and promise, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *J.* has not yet paid to him the said sum of twenty pounds, or any part thereof (although the said *T.* afterwards, to wit, the same day and year aforesaid, and often afterwards was requested by him the said *J.* so to do) but hath hitherto refused, and still doth refuse

A declaration
on by a trustee
against a
man for giving
a note to
him (who
was a trustee
to a girl) for
her use, defendant
having got her
with child,
upon condition
for the
girl to marry
a servant of
defendant's.

to

DECLARATIONS, PLEADINGS, &c.

to pay him the same, to the damage of the said *J. L.* of forty pounds, and thereupon he brings this suit.

A declaration for booms, age, also for the use of booms, marks and posts, piloting of ships in and out of the harbour.

Serj. Draper.

— To wit, *William W.* complains of *J. L.* &c. THAT WHEREAS the said *J. L.* upon the first day of *January*, in the sixteenth year of the reign of his present Majesty, at *B.* in the said county, was indebted to the said *William W.* in the sum of nine pounds of lawful money of *Great Britain*, for a certain duty called boomage, due and payable by the said *J. L.* to the said *William W.* for certain ships of the said *J. L.* before that time piloted and brought into the harbour of *Poole*, within the town and county of *Poole*, by the said *J. L.* and also for certain other ships of the said *J. L.* before that time piloted and carried out of the said harbour, and also for the use of certain booms and posts of the said *William W.* placed and fixed in and near the said harbour, for the better piloting of ships into and out of the said harbour, by the said *J. L.* for the piloting and bringing his said ships into and out of the said harbour, and at the instance and request of the said *William W.* and by his permission before that time held and enjoyed; and the said *J. L.* being so indebted in consideration thereof, afterwards, to wit, upon the day and year aforesaid, at *B.* aforesaid, took upon himself, and faithfully promised the said *William W.* to pay him the said nine pounds, when he should afterwards be thereunto required.

AND WHEREAS also, afterwards, to wit, upon the day and year aforesaid, at *B.* aforesaid, in consideration that the said *William W.* at the like instance and request of the said *J. L.* had before that time permitted the said *J. L.* to have and enjoy the use of certain other booms, marks, and posts of him the said *William W.* placed and fixed in and near the said harbour of *Poole*, for the better piloting the ships into and out of the said harbour, and the said *J. L.* by that permission, before that time, had used and enjoyed the said booms, marks and posts last above-mentioned, in and for the piloting and bringing divers other ships of him the said *J. L.* into and out of

of the said harbour, he the said *J. L.* took upon himself, and then and there faithfully promised the said *William W.* to pay him as much money as he reasonably deserved and ought to have of the same *William*, when he should afterwards be thereunto required. And the said *William W.* in fact saith, that he reasonably deserved, and ought to have for the use of the booms, marks and posts last mentioned, the sum of nine pounds, of like lawful money, to wit, at *B.* aforesaid, whereof the said *J. L.* at the same time and place had notice.

AND WHEREAS also the said *J. L.* afterwards, to wit, on the same day and year, at *B.* aforesaid, was indebted to the same *William W.* being then, and for a year and more then last past, continually from thence, hitherto, lawfully and rightfully possessed of, and entitled unto a certain duty, commonly called boomage, time out of mind due and payable, and paid by masters and owners of ships, for all ships from time to time piloted and brought into the said harbour of *Poole*, and also for all ships from time to time piloted and brought out of the same harbour, in another sum of nine pounds of like lawful money of the said duty called boomage, due and payable by the said *J. L.* to the said *William W.* for divers other ships, whereof the said *J. L.* was master; and by him the said *J. L.* before that time, and within the said year, piloted and brought into the same harbour; and also for divers other ships, whereof the said *J. L.* was master, by him the said *J. L.* before that time, and within the same year, piloted, and carried out of the same harbour. And the said *J. L.* being so indebted in consideration thereof, afterwards, to wit, at the same time and place, took upon himself, and faithfully promised the said *William W.* to pay him the said nine pounds last abovementioned, when he should afterwards be thereunto required. YET the aforesaid, &c.

—To wit, *William W.* complains of *J. L.* being, &c. of a plea of trespass on the case, for this, to wit, THAT WHEREAS the said *J.* the first day of *January*, in the sixth year of the reign of his present majesty, at in the said county, was indebted to

A declaration of a duty called boomage, for using buoys and sea marks, guiding into

to

and out of
the harbour.

Serjeant
Draper.

to the said *William W.* in the sum of nine pounds, of lawful money of *Great Britain*, for a certain duty, called boomage, due and payable to the said *William W.* by the said *J.* for his having had and enjoyed, by the permission of the said *William*, the use and benefit of certain buoys and sea marks of him the said *William*, for the safe guidance and direction of divers ships and vessels of the said *J.* into and out of the harbour of *Poole*; which said buoys and sea marks, when the use and benefit thereof were so had, were kept and maintained by the said *William*, at his trouble, charge and expence, in places convenient, in or near the said harbour of *Poole*, for the safe guidance and direction of ships and vessels, into and out of the said harbour; and being so indebted, the said *J.* then and there in consideration thereof, assumed upon himself, and then and there faithfully promised, that he the said *J.* the said nine pounds would well and truly pay and content, when afterwards he should be thereunto required.

AND WHEREAS ALSO, afterwards, to wit, the same day and year, at aforesaid, the said *J.* was indebted to him, the said *William*, in the further sum of nine pounds, for the use and benefit of certain other buoys and sea marks, of him the said *William*, for the safe guidance and direction of divers other ships and vessels of the said *J.* into and out of the said harbour of *Poole*, by the said *J.* at his special instance and request, by the permission of the said *William*, before that time had and enjoyed; and being so indebted, the said *J.* then and there, in consideration thereof, assumed upon himself, and then and there faithfully promised, that he the said *J.* the said nine pounds last mentioned, unto the said *William*, would well and truly pay and content, when afterwards he should be thereunto required.

AND WHEREAS ALSO, afterwards, to wit, the same day and year, at aforesaid, the said *J.* in consideration that the said *William* before, that time had permitted the said *J.* at his like special instance and request to have had and enjoyed the use and benefit of certain other buoys and sea marks of him the said *William*, for the safe guidance and direction of
divers

divers other ships and vessels of the said J. into and out of the said harbour of *Poole*, assumed upon himself, and then and there faithfully promised to the said *William*, that he the said J. would well and truly pay the said *William* when he should be thereunto required, as much money as he the said *William* reasonably deserved for the same. And the said *William* in fact faith, that he did reasonably deserve for the same, the further sum of nine pounds, to wit, at aforesaid, whereof the said J. then and there had notice. YET the aforesaid, &c.

This last declaration was the same cause of action, but the declaration was amended upon payment of costs, and this is the amended copy.

—To wit, *N. G.* complains of *S. S.* executor of the last will and testament of *E. F.* widow, deceased, being, &c. FOR THAT WHEREAS, hitherto, to wit, in *Easter* term, in the sixth year of the reign of our lord the king, that now is, before our said lord the king, at *Westminster*, came *D. L.* by *W. D.* his attorney, and brought there into the court of our said lord the king, then and there his certain bill against the said *E. F.* widow, in her life time, in the custody of the marshal of the *Marshalsea* of our said lord the king, before the king himself then being, of a plea of trespass upon the case, and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; by which said bill, in *London*, the said *D. L.* did complain of the aforesaid *E. F.* by the name of *E. F.* widow, in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself being, for that, to wit, That whereas (*reciting the declaration, throughout in the preterimperfect tense.*) AND WHEREAS the aforesaid *E.* in the same *Easter* term, in the said sixth year of the reign of his said present majesty, in the said court of our said Lord the king, before the king himself, at *Westminster* aforesaid, appearing by *F. S.* her attorney, came and defended the wrong and injury laid to her charge, in the said declaration, which she was ready to maintain when, where, and in such manner as the court should direct; and therefore he,

A declaration by one of the bail, against the executors of a defendant (for whom he was bail) for the damages which he had sustained on account of his becoming bail.

Serj. Bottle.

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DECLARATIONS, PLEADINGS, &c.

the said *N. G.* at the special instance and request of the aforesaid *E.* and also one *W. W.* afterwards, in the same *Easter* term, in the said sixth year of the reign of his present majesty, by the name of *N. G.* of *B.* in the county of *Southampton*, gent. and *W. W.* of *B.* aforesaid, husbandman, came in their proper persons, into the court of our said lord the king, before our said lord the king, at *Westminster* aforesaid, and became pledges and bail for the said *E.* and each of them became pledges and bail for the said *E.* that if the said *E.* should happen to be convicted in the plea aforesaid, then the said bail had granted, and each of them for himself had granted, that all such damages, costs and charges as should on that behalf be adjudged to the said *D.* should be taken and levied of their and each of their lands and chattels, to the use of the said *D.* if the said *E.* should not happen to pay the said damage to the said *D.* nor to render herself, on that account, to the prison of the marshal of the marshalsea of our said lord the king, before the king himself, as by the record of the same recognizance, now remaining in the said court of our said lord the king, before the king himself, here, to wit, at *Westminster* aforesaid, it doth more fully appear; and in consideration thereof the aforesaid *E.* then, to wit, at the time of his the said *N.*'s becoming pledge and bail, for the said *E.* as aforesaid, at *Westminster* aforesaid, in the county of *Middlesex* aforesaid, undertook, and to the said *N.* then and there faithfully promised to indemnify and keep harmless him the said *N.* of and from the damages and costs that he should sustain, or be put unto for or by reason of his becoming pledge and bail for matter proceeded upon, in the plea aforesaid, in the said court of our lord the king, before the king himself, at *Westminster* aforesaid, against the said *E.* that the said *D. L.* afterwards, to wit, in the term of the holy *Trinity*, in the sixth and seventh year of the reign of his said present majesty, in the said plea by bill, without his said present majesty's writ, and by judgment of the same court recovered against the aforesaid *E. F.* in her life time, four hundred and eighty seven pounds, ten shillings,

shillings, for damages which he had sustained, as well by occasion of her not performing her several promises and assumptions aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof she was convicted, as by record of that judgment in the same court of our said lord the king, before the king himself here, to wit, at *Westminster* aforesaid, it doth more fully appear; after which said judgment so obtained as aforesaid, she the said *E.* neither paid to the aforesaid *D.* the damages aforesaid, so as aforesaid recovered; nor did she render herself on that account to the prison of the *Marshalsea* of our said lord the king, before the king himself, according to the form and effect of the said recognizance; by reason whereof, the aforesaid *D.* for the more speedy obtaining of his said damages, so as aforesaid recovered, afterwards, that is to say, in the term of *St. Michael* in the seventh year of the reign of his said present majesty, sued out of the same court of our said lord the king, before the king himself, here, to wit, at *Westminster* aforesaid, his said majesty's writ of *scire facias*, against the aforesaid *N. G.* and *William W.* as pledges and bail for the said *E.* in the plea aforesaid, directed to the then coroners of the county of *Middlesex* aforesaid, one *R. W.* Esq; and the the said *D.* then being sheriff of the said county of *Middlesex*, by which said writ his said majesty did command the said coroners, that by honest and lawful men of their bailiwick, they should cause the aforesaid *N. G.* and *William W.* to know that they must be before our said lord the king, at *Westminster* aforesaid, on *Monday*, in the morrow of *St. Martin*, to shew if they had, or knew any thing to say for themselves, why the aforesaid *D.* ought not to have his execution against them, of the damages aforesaid, according to the force, form and effect of the recognizance aforesaid, if it should seem expedient to him; and further to do and receive all and singular those things which the said court of our said lord the king, before the king himself, of them, then and there should have consideration in that particular; and that the said coroners should then and there have the names of them by whom they should have

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made

DECLARATIONS, PLEADINGS, &c.

made them to know, and that writ; and it was, in such manner thereupon proceeded in the said court of our said lord the king, before the king himself here, to wit, at *Westminster*, against the said *N.* and the aforesaid *William W.* that in the same term of *St. Michael*, in the said seventh year of his said present Majesty's reign, in the same court of our said lord the king, before the king himself, at *Westminster* aforesaid, it was considered that the aforesaid *D.* should have execution against them the said *N. G.* and *William W.* of the damages aforesaid, according to the force, form and effect of the recognizance aforesaid, as by the record and proceeding thereof in the same court of our said lord the king, before the king himself remaining, it doth more fully and at large appear, whereby the said *N.* to avoid being taken in execution for the said damages so recovered against him, afterwards, that is to say, on the seventh day of *December*, in the said seventh year of the reign of his said present Majesty, at *Westminster* aforesaid, in the county aforesaid, was compelled, and under a necessity to pay to the said *D.* the sum of four hundred and eighty seven pounds, ten shillings, for the damages aforesaid, so as aforesaid recovered; and also did expend and lay out in and about his defence in that behalf in the said suit, another large sum of money, to wit, the sum of fifteen pounds, that is to say, at *Westminster* aforesaid, in the county aforesaid, whereof the said *E.* afterwards, in her lifetime, that is to say, on the said seventh day of *December*, in the said seventh year of the reign of his present Majesty there had notice. Nevertheless the aforesaid *E.* not regarding her promise and undertaking aforesaid, but contriving and fraudulently intending the said *N.* in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money, amounting in the whole to the sum of five hundred and two pounds, ten shillings; which the said *N.* so as aforesaid, paid, laid out and expended, by reason, and on the account of his becoming pledge and bail of the said *E.* in the plea aforesaid, or any part thereof to the said *N.* hath not paid, nor hath she indemnified him the said *N.* from the same; but to in-

demnify

demnify and keep harmless him the said *N.* from the same the said *E.* in her life time, and the aforesaid *S.* after her death hath hitherto altogether refused, and the said *S.* still doth refuse.—*A common count for money paid out and expended.* YET THE AFORESAID, &c.

—To wit, *L. H.* complains of *R. C.* being, &c. A declaration for three promissory notes delivered to defendant by plaintiff, to receive of a person for him in France, defendant was then sailing for France and promised to be accountable for the said notes. Warren.

FOR THAT WHEREAS the said *R.* on the twenty ninth day of *January*, in the year of our Lord one thousand seven hundred and thirty four, was about to go a certain voyage into parts beyond the seas, to wit, into the kingdom of *France*.

AND WHEREAS one *S. P.* who the same day and year aforesaid, resided and was remorant in parts beyond the seas, to wit, in the kingdom of *France*. AND WHEREAS one *S. P.* who the same day and year aforesaid, resided, and was remorant in parts beyond the seas, to wit, in the kingdom of *France* aforesaid, was then indebted unto the said *L.* in eighty one pounds upon three certain promissory notes, under the hand of the said *S.* then due and remaining unpaid to the said *L.* to wit, at *N.* in the county of *B.* aforesaid; and the said *R.* being about to go the said voyage as aforesaid, he the said *R.* on the same day and year above said, at

aforesaid, in the county aforesaid, in consideration that the said *L.* at the special instance and request of the said *R.* had delivered the said three promissory notes above-mentioned to the said *R.* he the said *R.* undertook, and then and there faithfully promised the said *L.* to be accountable to the said *L.* for the three promissory notes when he should return from his said intended voyage. And the said *L.* doth aver, that the said *R.* afterwards, to wit, on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty five, at *N.* aforesaid, returned from his said voyage. Yet the said *R.* not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *L.* in this particular, at the time of his return from the said voyage, or at any time afterwards, hitherto hath not accounted with the said *L.* for the said promissory notes

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or any of them, (although to do this he the said *R.* afterwards, to wit, on the said first day of *October*, in the year last aforesaid, and often afterwards, at aforesaid, by the said *L.* was requested) but he to account with the said *L.* for the said three promissory notes or any of them, hath hitherto wholly neglected and refused, and still doth refuse, to wit, at aforesaid.

AND WHEREAS afterwards, to wit, on the said twenty ninth day of *January*, in the year of our Lord one thousand seven hundred and thirty four aforesaid, the said *R.* was about to go a certain other voyage into parts beyond the seas, to wit, into the kingdom of *France* aforesaid. And the said *S.* the same day and year last aforesaid, resided and was commorant in parts beyond the seas, to wit, in the kingdom of *France* aforesaid. And the said *S.* on the same day and year last aforesaid, at aforesaid, was indebted unto the said *L.* in other eighty one pounds, upon three other promissory notes, under the hand of the said *S.* then due and remaining unpaid to the said *L.* And the said *R.* so being about to go the said last mentioned voyage as aforesaid he the said *R.* the same day and year last aforesaid, at aforesaid, in consideration that the said *L.* at the like request of the said *R.* had delivered to the said *R.* the said three last mentioned promissory notes, undertook, and then and there faithfully promised the said *L.* that he the said *R.* in his voyage last mentioned, would endeavour to receive of the said *S.* the said eighty one pounds so due from the said *S.* to the said *L.* and on the said *R.*'s return from the said voyage, would pay to the said *L.* all such money as the said *R.* should have received of the said *S.* by virtue of the said last mentioned notes or any of them. And the said *L.* doth aver, that the said *R.* afterward, to wit, on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty four aforesaid, at aforesaid, returned from his said last mentioned voyage. And that he the said *R.* in his said voyage last mentioned, to wit, on the first day of *January*, in the year of our Lord one thousand seven hundred and thirty four, in parts beyond the seas, to wit, at *Paris*, in the kingdom of *France*, received of the

the said *S.* by virtue of the said last mentioned notes, a great sum of money, to wit, the whole sum of eighty one pounds so due to the said *L.* from the said *S.* on the said last mentioned notes. Yet the said *R.* not regarding his said last mentioned promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *L.* in this particular, hath not yet paid to the said *L.* the said sum of money or any part thereof so by him the said *R.* as aforesaid, received of the said *S.* (although to do this he the said *R.* afterwards, to wit, on the said first day of *October*, in the year of our Lord one thousand seven hundred and thirty four aforesaid, and often afterwards at aforesaid, by the said *L.* was requested). And he to pay the same hitherto wholly hath and still doth refuse.—*A count for money had and received.* YET THE AFORESAID, &c.

—To wit, *T. G.* complains of *William G. &c.* A declaration FOR THAT WHEREAS the said *T.* on the first day of *September*, in the year of our Lord one thousand seven hundred and thirty five, at in the county plaintiff aforesaid, bought of the said *William* all the turnips of bought one acre of turnips of defendant the said *William*, then growing on a certain close of land of the said *William*, containing by estimation, one acre, lying and being at aforesaid, in the county bargain was made about a month before *Michaelmas*, and plaintiff was to have the close till the second of *February*, to take them at the price of them in this manner, viz. to pay defendant five shillings when he began to draw them, and five shillings more there of a week

more for three weeks following; one shilling being given at the time of making the bargain, in earnest, but defendant refused to let him have them, and keeps the one shilling which he paid in earnest, and pleaded to have sold them before.

Warren.

of whensoever the said *T.* should begin to draw and gather the said turnips; five shillings more thereof at the end of one week next after the said *T.* should so begin to draw and gather the said turnips; five shillings more thereof at the end of two weeks next after the said *T.* should so begin to draw and gather the said turnips; and five shillings residue thereof at the end of three weeks next after the said *T.* should so begin to draw and gather the said turnips. And the said agreement being so made, he the said *T.* afterwards, to wit, on the said first day of *September*, in the said year of our Lord one thousand seven hundred and thirty five, at the aforesaid, in the county aforesaid, paid unto the said *William* one shilling, in part of payment of the said rate or price so agreed to be paid by him the said *William*, for the said turnips; and then and there undertook and faithfully promised the said *William* to perform and fulfil the said agreement in all things, on his part and behalf to be performed and fulfilled; and in consideration thereof the said *William* then and there undertook and faithfully promised the said *T.* to perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled. And the said *T.* avers, that he the said *T.* after the making the aforesaid agreement and promises, and before the said day of *October* then next following, to wit, on the twenty first day of *October* in the year of our Lord one thousand seven hundred and thirty five aforesaid at the aforesaid, in the county aforesaid, was ready, and offered to begin to draw and gather the said turnips, and then and there requested the said *William*, to permit him the said *T.* to enter into the said close, and to gather and draw the said turnips according to the form and effect of the said agreement. And the said *T.* then and there offered to pay and was ready to pay, and tendered unto the said *William* the sum of five shillings as part of the said rate or price; which part of the said rate or price, the said *T.* was, according to the said agreement, to pay unto the said *William*, whensoever the said *T.* should begin to draw and gather the said turnips. Yet the said *William* not regarding his said promise and undertaking,

but

out contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *T.* in this particular, he the said *William* then, or any time afterwards hitherto would not, nor did permit the said *T.* to enter into the said close, or to gather or draw the said turnips or any part thereof; but the doing thereof then and there wholly refused (although the said *William* to perform his said agreement in this particular, afterwards, to wit, on the same day and year last abovesaid, and often afterwards at aforesaid, in the county aforesaid, was requested by the said *T.* (but he the said *William*, to do the same, hitherto wholly hath refused.) And afterwards, to wit, on the thirteenth day of *November*, in the year of our Lord one thousand seven hundred and thirty five aforesaid, at aforesaid, in the county aforesaid, he the said *William* caused and permitted divers other persons to gather the said turnips, to wit, at aforesaid.—*A common count for money had and received to plaintiff's use, and a like conclusion to this last count.*

—To wit. *P. D.* complains of *J. C.* being, &c. A declaration on by a surgeon for curing defendant's wife of a foreleg, and for many attendances and jour-nies.
 FOR THAT WHEREAS the said *J.* on the first day of *June*, in the year of our Lord one thousand seven hundred and thirty six, at in the county aforesaid, was indebted unto the said *P.* in ten pounds of lawful money of *Great Britain*, for his work and labour, care and diligence before that time done and performed and bestowed by the said *P.* as a chirurgeon in and about the healing and curing of one *G. C.* the wife of the said *J.* of divers wounds, sores, disorders and maladies under which she had laboured and languished; and for divers plaisters, ointments, and other necessary things before that time provided, used and applied in that particular by the said *P.* at the special instance and request of the said *J.* and being so indebted, he the said *J.* in consideration thereof, afterwards, to wit, on the same day and year abovesaid, at aforesaid, and then and there faithfully promised the said *P.* to pay him the said sum of money when he should be afterwards thereto required.

AND

DECLARATIONS, PLEADINGS, &c.

AND WHEREAS afterwards, to wit, on the same day and year abovesaid, at aforesaid, in consideration that the said *P.* had before that time, at the like request of the said *J.* done, performed and bestowed other his work and labour, care and diligence as chirurgeon in and about the healing and curing of the said *G.* of divers wounds, sores, disorders and maladies under which she had laboured and languished, and had in that particular provided and applied divers other plaisters, ointments, and other necessary things, at the like special instance and request of the said *J.* he the said *J.* undertook, and then and there faithfully promised the said *P.* to pay him so much money as he therefore reasonably deserved to have. And the said *P.* doth aver, that he therefore reasonably deserves to have of the said *J.* other ten pounds of like lawful money, to wit, at aforesaid, whereof the said *J.* then and there had notice.

AND WHEREAS the said *J.* afterwards, to wit, on the same day and year abovesaid, at aforesaid, was indebted unto the said *P.* in other ten pounds of like lawful money, for other his work and labour, care and diligence, before that time done, performed and bestowed by the said *P.* as an apothecary, in and about the healing and curing of the said *G.* of divers diseases and distempers, under which she had laboured and languished; and had also before that time, found and provided divers medicines and physick, administered and applied by the said *P.* in that particular, at the special instance and request of the said *J.* and being so indebted he the said *J.* in consideration thereof, afterwards, to wit, on the same day and year abovesaid, at aforesaid, undertook, and then and there faithfully promised the said *P.* to pay him the said last mentioned sum of money when he should be afterwards thereto requested.

AND WHEREAS afterwards, to wit, on the same day and year abovesaid, at aforesaid, in consideration that the said *P.* had before that time, done, performed and bestowed, other his work and labour, care and diligence, as an apothecary, in and about the
healing

healing and curing of the said *G.* of divers other distempers under which she laboured and languished; and had also before that time found and provided divers other medicines and physic, used and administered and applied by the said *P.* in that particular, at the like special instance and request of the said *J. H.* he the said *J.* undertook, and then and there faithfully promised the said *P.* to pay him so much money as he therefore reasonably deserved to have. And the said *P.* doth aver, that he therefore reasonably deserved to have of the said *J.* other ten pounds of like lawful money, to wit, at the aforesaid, whereof the said *J.* then and there had notice. *With a common conclusion.*

J. H. complains of *W. H.* and *B.* his wife, executrix, &c. of *J. H.* deceased, being, &c. FOR THAT WHEREAS the said *J. H.* in his life time, to wit, on the day of in the year of our Lord at in the county aforesaid, was indebted unto the said *J. H.* in ten pounds of lawful money of *Great Britain*, for the work, labour and journeys of the said *J. H.* before that time done and performed by the said *J. H.* for the said *J. H.* in his life time, in and about the business of the said *J. H.* and at his special instance and request; and being so indebted, the said *J. H.* in his life time, in consideration thereof afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, took upon himself, and then and there faithfully promised the said *J. H.* that he the said *J. H.* would well and truly pay and satisfy to the said *J. H.* the said ten pounds, when he should be afterwards thereunto required.

AND ALSO WHEREAS the said *J. H.* in his life time, afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, in consideration that the said *J. H.* had before that time, at the like special instance and request of him the said *J. H.* in his life time, done and performed other work and labour and journeys for the said *J. H.* in his life time, did take upon himself, and then and there faithfully promised the
said

A declaration against an executrix, by a surgeon, for attending and visiting testator in his illness.

Serj. Beale.

said *J. H.* that he the said *J. H.* would well and truly pay and satisfy to the said *J. H.* as much money as he therefore reasonably deserved to have for his said work and labour and journeys last mentioned, when he should be afterwards thereunto required. And the said *J. H.* doth aver that he therefore reasonably deserved of the said *J. H.* other ten pounds of like lawful money, for the said work, labour and journeys last mentioned, to wit, at aforesaid, in the county aforesaid, whereof the said *J. H.* in his life time, then and there had notice.

AND ALSO WHEREAS the said *J. H.* in his life time afterwards, to wit, on the day and year aforesaid, at aforesaid, in the county aforesaid, was indebted unto the said *J. H.* in other ten pounds of like lawful money, for his work and labour, care and diligence as a surgeon, in attending and visiting the said *J. H.* in his illness and disorder of body, before that time done, performed and bestowed by the said *J. H.* at the special instance and request of the said *J. H.* in his life time; and being so indebted, he the said *J. H.* in his life time, in consideration thereof, afterwards, to wit, on the same day and year above said, at aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said *J. H.* to pay him the said sum of money last mentioned, when he should be thereunto required.

AND WHEREAS afterwards, to wit, on the same day and year above said, at aforesaid, in the county aforesaid, in consideration that the said *J. H.* had before that time, at the like special instance and request of the said *J. H.* in his life time, done, performed and bestowed, other his work and labour, care and diligence as a surgeon, in attending and visiting the said *J. H.* in his illness and disorder of body under which he laboured and languished; he the said *J. H.* undertook, and then and there faithfully promised the said *J. H.* to pay him so much money as he therefore reasonably deserved to have. And the said *J. H.* doth aver, that he therefore reasonably deserved to have of the said *J. H.* other ten pounds of like lawful money to wit, at

aforesaid, in the county aforesaid, whereof the
 id *J. H.* in his life time, then and there had notice.
 ET THE AFORESAID, &c.

—To wit, *W. L.* complains of *W. C.* being, &c. A declarati-
 OR THAT WHEREAS on the eighteenth day of carrier for
March, in the year of our Lord one thousand seven goods deliv-
 hundred and thirty four, at *W. M.* in the county of *D.* ered to him
 aforesaid, in consideration that the said *W. L.* had then at *W.* to be
 and there, at the special instance and request of the left at *P.*
 id *W. C.* delivered to the said *W. C.* divers goods and and from
 chattels to the said *W. L.* to wit, one linen sheet and thence to be
 eighteen ells of linen cloth, called canvas sheeting, to sent to *W.*
 the value of thirty shillings, to be safely carried by the and lost
 id *W. C.* from *W. M.* aforesaid, to the town and them.
 county of *P.* and there to be delivered by the said *W. C.* *Warren.*
 to one *E. B.* to the use of the said *W. L.* for a reason-
 able reward or hire to be therefore paid by the said *W.*
 to the said *W. C.* he the said *W. C.* undertook, and
 then and there faithfully promised the said *W. L.* safely
 to carry the said goods and chattels from *W. M.* afore-
 said, to *P.* aforesaid, and there faithfully to deliver the
 same to the said *E. B.* to the use of the said *W. L.*
 yet the said *W. C.* not regarding his said promise and
 undertaking, but contriving and fraudulently intending,
 craftily and subtilly, to deceive and defraud the said
W. L. in this particular, hath not yet delivered the said
 goods and chattels, or any part thereof to the said *E. B.*
 or the said *W. L.* at the town and county of *P.* afore-
 said, or elsewhere, (but he to deliver the same to them
 or either of them, hitherto wholly hath and still doth
 refuse) although to do this the said *W. C.* afterwards,
 to wit, on the sixteenth day of *March*, in the year
 aforesaid, at *W. M.* aforesaid, was requested.

AND WHEREAS on the said thirteenth day of *March*,
 in the year of our Lord one thousand seven hundred
 and thirty four aforesaid, at *W. M.* aforesaid, in the
 county of *D.* aforesaid, in consideration that he the
 said *W. L.* had then and there, at the like special in-
 stance and request of the said *W. C.* delivered to the
 said

faid *W. C.* divers other goods and chattels of the faid *W. L.* to wit, another linen sheet and other eighteen ells of linen cloth called canvas sheeting, to the value of other thirty shillings, to be safely carried by the faid *W. C.* from *W. M.* aforesaid, in the town and county of *P.* aforesaid, and there to be delivered by the faid *W. C.* to the faid *W. D.* for a reasonable reward or hire to be therefore paid by the faid *W. L.* he the faid *W. C.* undertook, and then and there faithfully promised the faid *W. L.* safely to carry the faid last mentioned goods and chattels from *W. M.* aforesaid, to *P.* aforesaid, and there faithfully to deliver the same to the faid *W. L.* yet the faid *W. C.* not regarding his promise and undertaking last mentioned, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the faid *W. L.* in this particular, hath not yet delivered the last mentioned goods or chattels, or any part thereof, to the faid *W. L.* at the town and county of *P.* aforesaid, or elsewhere, (but he to deliver the same to him hitherto wholly hath and still doth refuse) although to do this he the faid *W. C.* afterwards, to wit, on the faid sixteenth day of *March*, in the year aforesaid, at *W. M.* aforesaid, was requested, but he to deliver the same to the faid *W. L.* at *P.* aforesaid, or elsewhere, hitherto wholly hath and still doth refuse to the faid *W. L.* his damage of ten pounds, and therefore he brings this suit.

The same
declaration
with that
immediate-
ly prece-
ding.

Perused by
Serj. Bootle.

As before to in consideration that the faid *W. L.* had at the instance of the faid *W. C.* delivered to the faid *W. C.* divers goods and chattels, to wit, one linen sheet and eighteen ells of linen cloth, called canvas sheeting, of the faid *W. L.* to the value of thirty shillings, to be safely carried by the faid *W. C.* from *W. M.* aforesaid, to the town and county of *P.* to be sent from thence to *W.* in the county of *D.* aforesaid, by a boat of one *E. B.* for the use of the faid *W. L.* for a reasonable reward to be paid by the faid *W. L.* to the faid *W. C.* for the same, he the faid *W. C.* undertook, and then and there faithfully promised *W. L.* safely to carry the faid goods and

chattels

chattels, from *W. M.* afore said, to *P.* afore said, and send the same from thence to *W.* afore said, by the said boat, for the use of the said *W. L.* and although the said *W. C.* had and received the afore said goods and chattels at *W. M.* afore said, to carry as afore said, yet the said *W. C.* not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *W. J.* in this behalf, hath not safely carried the said goods and chattels from *W. M.* afore said, to the said town and county of *P.* and sent the same from thence to *W.* afore said by the said boat, for the use of the said *W. L.* nor hath hitherto regarded to carry the said goods and chattels, and to send them by the said boat, according to his said promise and undertaking (although to do this he the said *W. C.* afterwards, to wit, on the sixteenth day of *March*, in the year afore said, at *W. M.* afore said, was by the said *W. L.* requested) but to carry the said goods and chattels from *W. M.* afore said, to *P.* afore said, and to send the same from thence to *W.* afore said, by the said boat, for the use of the said *W. L.* hath hitherto altogether neglected and refused, and the said goods and chattels as to the said *W. L.* are entirely lost.

AND WHEREAS on the thirteenth day of *March*, in the year of our Lord one thousand seven hundred and thirty four, at *W. M.* afore said in the county of *D.* afore said, in consideration that he the said *W. L.* had then and there at the like instance of the said *W. C.* delivered to the said *W. C.* divers other goods and chattels, to wit, one other linen sheet and other eighteen ells of linen cloth, called canvas sheeting, of the said *W. L.* of the value of other thirty shillings, to be safely carried by the said *W. C.* from *W. M.* afore said, to the town and county of *P.* afore said, for a reasonable reward to be paid by the said *W. L.* to the said *W. C.* for the same; the said *W.* undertook, and then and there faithfully promised the said *W. L.* safely to carry the said last mentioned goods and chattels from *W. M.* afore said, to *P.* afore said, yet the said *W. C.* not regarding his said promise and undertaking last mentioned,

but

DECLARATIONS, PLEADINGS, &c.

but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *W. L.* in this behalf, hath not safely carried the said last mentioned goods and chattels from *W. M.* aforesaid, to *P.* aforesaid, (although to do this he the said *W. C.* afterwards, to wit, on the said sixteenth day of *March*, in the year aforesaid, at *W. M.* aforesaid, was requested) but to carry the same according to his said last mentioned promise and undertaking, hath hitherto altogether neglected and refused, and for want of due care of the said *W. C.* or his servants in this behalf, the said goods and chattels last mentioned, are as to the said *W. L.* entirely lost, to the damage of the said *W. L.* ten pounds, and therefore he brings this suit.

A declaration
on for
freight of
goods by
water.

S. B. late of, &c. and *B. B.* late of, &c. were attached to answer *E. S.* of a plea of trespass upon the case, &c. and whereupon the said *E.* by his attorney complains, THAT WHEREAS (*a common count for work and labour, and a quantum meruit for the same*).

AND ALSO WHEREAS the said *S.* and *B.* afterwards, to wit, on the same day and year aforesaid, at aforesaid, in the aforesaid, were indebted to the said *E.* in other eighty five pounds of like lawful money for freight of several parcels of malt and beans before that time, at the like instance and request of the said *S.* and *B.* carried and conveyed by the said *E.* in his ship or vessel, from the port of *Kingston* upon *Hull* to the city of *London*, and there to be delivered to the said *S.* and *B.* and being so indebted, in consideration thereof, afterwards, on the day and year aforesaid, at aforesaid, in the aforesaid, took upon themselves, and then and there faithfully promised the said *E.* that they would well and truly pay to the said *E.* the said eighty five pounds last mentioned, when they should be thereto requested.

AND WHEREAS the said *S.* and *B.* afterwards, to wit, on the day and year aforesaid, at aforesaid, in the aforesaid, in consideration that

that the said *E.* had before that time, at the like instance and request of the said *S.* and *B.* carried and conveyed in his the said *E.*'s ship or vessel, called the *Sarah* and *Elizabeth*, one other large parcel of malt, consisting of one hundred quarters, and one other large parcel of beans, consisting likewise of one hundred quarters, and divers other goods and wares and merchandizes, from the port of *Kingston* upon *Hull* to the city of *London* aforesaid, and had thus delivered the same to the said *S.* and *B.* took upon themselves, and then and there faithfully promised the said *E.* that they the said *S.* and *B.* would well and truly pay to the said *E.* so much money as he deserved to have for the freight of the same malt and beans, and other goods, wares and merchandizes, when they should be thereunto requested; and the said *E.* avers, that he reasonably deserved to have of the said *S.* and *B.* for the freight thereof, another eighty five pounds of like lawful money, to wit, at aforesaid, in the aforesaid, whereof the said *S.* and *B.* on the day and year aforesaid, then had notice from the said *E.*

Averment:

AND WHEREAS the said *S.* &c. *A common count for money had and received, and for money paid, laid out and expended, with a common conclusion.*

G. S. late of the parish of *G.* in the county of *S.* Declaration
gent. was attached to answer unto *H. R.* gent. of a plea for great
of trespass on the case, &c. And thereupon the said tythes.
H. by his attorney, complains, THAT
WHEREAS the said *H.* on the twenty sixth day of *Warren.*
March, in the year of our Lord, one thousand seven
hundred and thirty four, and from thence for the space
of two years and more next following, was proprietor
and owner of the tythes and grain, issuing, renewing
and arising from, and growing on seventy acres of land,
with the appurtenances, lying and being within the
parish of *G.* aforesaid, and the tythable places of the
said parish, which said seventy acres of land with the
appurtenances, during all the time aforesaid, were in
the possession and occupation of the said *G.*

AND

DECLARATIONS, PLEADINGS, &c.

AND WHEREAS the said *G.* on the twenty sixth day of *March*, in the year of our Lord one thousand seven hundred and thirty six, at the parish of *G.* aforesaid, was indebted unto the said *H.* in six pounds of like lawful money of *Great Britain*, for certain tythes of grain growing on and coming of the said seventy acres of land before that time, the said *H.* as *proprietor and owner of the Tythes* aforesaid, to the said *G.* and at his request fold, and by the said *G.* before then had and retained to his own use by virtue of a certain *agreement and composition*, for the said tythes before then made and had between the said *G.* and *H.* in that particular, and which tythes were payable to the said *H.* as *proprietor and owner of the tythes* aforesaid, from the said *G.* as *occupier and possessor of the said seventy acres* of land, and being so indebted to the said *G.* in consideration thereof, afterwards, to wit, on the said twenty sixth day of *March*, in the year of our Lord one thousand seven hundred and thirty six, at the parish aforesaid, undertook, and then and there faithfully promised the said *H.* to pay him the said six pounds when he should be afterwards thereto requested.

AND WHEREAS afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in consideration that the said *H.* proprietor and owner of the tythes aforesaid, at the like special instance and request of the said *G.* had permitted the said *G.* to take and retain to his own use certain other tythes of grain, renewing and growing on and coming of the said seventy acres of land, which were due and payable to the said *H.* as proprietor and owner of the tythes aforesaid, that the said *G.* by that permission of the said *H.* had before that time taken and retained to his own use the said last mentioned tythes, he the said *G.* undertook, and then and there faithfully promised the said *H.* to pay him so much money as he therefore deserved to have. And the said *H.* doth aver, that he therefore reasonably deserved to have of the said *G.* other six pounds, to wit, at the parish

trish afore said, whereof the said G. then and there had notice. *With a common conclusion.*

If there be no modus decimandi, no action at law will lye; the remedy must either be, by bill in the exchequer, or libel in the spiritual court; for being an ecclesiastical matter, it may be sued for in the spiritual court, and being a demand, a bill in equity may be brought for it, and if upon the agreement, then an action at law is founded.

J. H. late of, &c. was attached to answer to J. S. in a plea of trespass upon the case, &c. And whereupon the said J. S. by his attorney, complains, THAT WHEREAS on the thirteenth day of May, in the year of our Lord one thousand seven hundred and thirty six, at afore said, in the said county, the said J. S. was possessed of a gelding, and being so possessed thereof, a discourse then and there was had between the said J. S. and J. H. concerning the said gelding, and the said J. H. buying the same, upon which it was then and there agreed between the said J. S. and J. H. that the said J. H. should have the said gelding as his own gelding, and that the said J. H. should keep the gelding in sweats or running order or condition, till the twenty pounds plate at P. in H. should be run for, and he should run the said gelding for that plate, and in case the said gelding should win the said plate, then the said J. H. should pay to the said J. S. the price of thirty guineas for the said gelding. And in case the said gelding should not win the said plate, then the said J. H. should only pay to the said J. S. the price of fifteen guineas for the said gelding. And the said agreement being so made, afterwards, to wit, the same day and year at afore said, in the county afore said, in consideration that the said J. S. at the special instance and request of the said J. H. had then and there undertaken, and faithfully promised the said J. H. that he the said J. S. would well and faithfully perform and fulfil the said agreement on his part, the said J. H. undertook, and then and there faithfully promised

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the

A declaration on special contract concerning a horse, for which defendant was to give fifteen guineas to plaintiff, and keep him in running order to run him at a race, and if he won, defendant was to give thirty guineas for him, and paid one guinea earnest, but the defendant neglected keeping him in running order.

Hardcastle.

DECLARATIONS, PLEADINGS, &c.

the said *J. S.* that he the said *J. H.* would well and faithfully perform and fulfil the said agreement on his part. And although the said *J. S.* in pursuance and performance of the said agreement on his part, after the making of the said agreement, to wit, the day and year abovesaid, at aforesaid, delivered to the said *J. H.* to his own use the aforesaid gelding; and although no twenty pounds plate has been run for at *P.* aforesaid, since the time of making the said agreement, yet the said *J. H.* in no wise regarding his said promise and undertaking made in form aforesaid, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *J. S.* in this respect, did not keep the said gelding in sweats and running order or condition, from the making of the said agreement until the twenty fourth day of *April* then next following, but neglected and refused so to do. *A common count for a certain gelding sold and delivered, and a quantum meruit for another gelding, with a common conclusion to the two last promises.*

Declaration
for diverting
a water
course from
a mill, by
pulling
down a weir
in the bank.

Warren.

R. C. complains of *J. W.* being, &c. FOR THAT WHEREAS he the said *R.* on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty five, was and from thence continually afterwards hitherto hath been and still is lawfully and right-fully possessed of and in one stamping mill with the appurtenances, situate and being in the parish of *K.* in the county aforesaid, in which said stamping mill with the appurtenances, he the said *R.* hath for all the time aforesaid, used and exercised the trade and business of a tin ore stamper, to wit, at the parish aforesaid.

AND WHEREAS a certain water course or rivulet, hath for all the time aforesaid, until the diversions thereof hereafter mentioned, of right run, and from the time of the said diversion thereof, hitherto of right ought to have run and still of right ought to run * *from a certain place*

* Not necessary to set out the intermediate courses at all, but if you do, they must be proved as set out.

place called the mouth of Lower Baldew addit. otherwise the head of Lower Baldew addit. in the parish aforesaid, to the said stamping mill, without any hindrance or obstruction whatsoever, for the necessary and convenient working of the said stamping mill of the said R. and to the use, benefit and advantage of the said R. in the carrying on, using and exercising the said business of a tin ore stamper, in his said stamping mill. Yet the said J. well knowing the premises, but contriving and maliciously intending wrongfully to hurt and injure the said R. and to hinder and deprive him of the use, benefit and advantage of the water of the said water course or rivulet aforesaid, and thereby to prejudice, damnify and obstruct the said R. in the carrying on, using and exercising his business aforesaid, in his said stamping mill, on the said first day of *December*, in the year aforesaid, and for the space of one month then next following, diverted and let out the water of the said water course or rivulet aforesaid, which ought to have run to the said stamping mill of the said R. out of its right, usual and ancient course, by breaking, entering, pulling down and destroying a certain weir on the bank of the said water course or rivulet, * *between the said place called the mouth of Lower Baldew addit. otherwise the head of Lower Baldew addit. and the said stamping mill* of the said R. and by continuing the said weir so broken, cut, pulled down and destroyed, for all the time last aforesaid, whereby the said water for all that time could not run to the said stamping mill so copiously as before it was used and accustomed to run, whereby the said R. could not follow, exercise or use his said business, for want of sufficient water for the working of his said stamping mill, and for the use and exercise of his said business during the time last aforesaid, and by reason thereof, he the said R. for all the time last aforesaid, was wholly deprived of and lost the use, advantage and benefit of the

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said

* The very part by name where the obstruction was made, never ought to be more particularly described, than that it was done at a certain place there called so and so.

said water course or rivulet, and the benefit, profit and advantage which he for all that time should have gained and acquired in his business aforesaid, to the said R. his damage of one hundred pounds, and therefore he brings his suit.

Declaration
by a master
against a ser-
vant who
was a mana-
ger of a
quarry (out
of which
slate was
made) for
absenting
himself from
his service,
whereby se-
veral other
servants and
horses at-
tending on
him were
obliged to
lie still.
*Serj. Dra-
per.*

J. M. gent. complains of *S. G. being, &c.* FOR
THAT WHEREAS the said *J.* upon the twenty ninth
day of *September*, in the year of our Lord one thousand
seven hundred and thirty four, at in the coun-
ty aforesaid, had retained the said *S.* to serve him in the
service and business of a quarry-man, for one year then
next ensuing for a reasonable reward to be paid the
said *S.* by the said *J.* for his said service, and the said *S.*
in pursuance of his said retainer afterwards, to wit,
upon the thirtieth day of *September*, in the year
aforesaid, at aforesaid, entered in the said service
of the said *J.* to serve him in the said business, for the
said year. Yet the said *S.* devising to prejudice and
damage the said *J.* in this behalf afterwards, to wit,
upon the first day of *November*, in the said year one
thousand seven hundred and thirty four, and on divers
other days and times between that day and the twenty
ninth day of *September* then next following, at
aforesaid, without any reasonable cause, and without
the licence and consent of the said *J.* absented himself
from the said service of the said *J.* by reason and means
whereof the said *J.* every day in which the said *S.* so
absented himself as aforesaid, lost the profit of making
two thousand slate, and also the labour and profit of di-
vers other servants, and divers horses by him the said *J.*
upon the said several days employed to attend on the
said *S.* in his said service, whereby the said *J.* saith,
that he is prejudiced and damaged to the value of forty
pounds, and therefore he brings this suit, &c.

A declarati-
on in tref-
pass on the
case for
foundering
plaintiff's
ground.
Serj. Bostle.

To wit, *J. S. late of, &c.* was attached to an-
swer *J. W. Esq;* in a plea of trespass upon the case,
&c. And whereupon the said *J. W.* by his
attorney complains, THAT WHEREAS the said *J. W.*
on the first day of *April*, in the year of our Lord
one

one thousand seven hundred and twenty two, and before and from that time hitherto hath been seised of and in the reversion of a certain close called the *Upper Hew Close*, lying and being in the parish of *B.* in the county aforesaid, the possession thereof for and during the time aforesaid having been in divers other persons by virtue of demises thereof made to them for terms of years, and the reversion thereof to the said *J. W.* and his heirs belonging. Nevertheless the said *J. S.* not ignorant of the premises, but designing and maliciously intending to aggrieve and damnify the said *J. W.* and to diminish, waste and destroy the soil and ground of the said close, and to damnify him in his said inheritance and reversion, on the said first day of *April*, in the year aforesaid, (and the reversion of the said close to the said *J. W.* as aforesaid, then and for the whole time aforesaid, and still belonging) a great quantity of soil, earth, gravel and clay at the parish aforesaid, in a certain other close or place then called *Brick Place*, so nigh to the said close called the *Upper Hew Close*, did dig and cause to be dug, and the soil, earth, gravel and clay, to wit, five thousand cart loads thereof, then and there dug, did cast out and remove and cause to be carted out and removed, whereby a great part of the ground, to wit, one rod of ground, parcel of the said close, called *Upper Hew Close*, was by the digging aforesaid so undermined and hollowed under, that the surface of the said rod of ground hath at divers days and times within that day and the eighteenth day of *January*, in the year of our Lord one thousand seven hundred and thirty four, tumbled down and fallen in; and another great part, to wit, one other rod of ground, parcel of the said close, on divers days and times within the time aforesaid, by the digging aforesaid, hath tumbled down, and hath been destroyed and wasted, whereupon the said *J. W.* saith, that as to his inheritance and reversion aforesaid, of and in the said close, called the *Upper Hew Close*, he is prejudiced and hath received damage to the value of sixty pounds, and thereupon he bringeth suit, &c.

To

A declaration for erecting a dam of mols on an ancient river which overflowed plaintiff's meadow, and carried away manure.

Serj. Bogle.

To wit, *J. P.* late of, &c. was attached to answer *B. B.* in a plea of trespass upon the case, &c. And whereupon the said *B.* by his attorney, complains, THAT WHEREAS the said *B.* on the first day of *August*, in the year of our Lord one thousand seven hundred and thirty two, and from thence hitherto hath been and still is possessed of six acres of meadow ground, lying and being in a certain mead, called *Ogher Meadow*, in the parish of *C.* in the county aforesaid, adjoining to a certain ancient river there, called *A.* the water of which said river hath run and ought to run, and hath for time immemorial, until the obstruction hereafter mentioned, run in the ancient usual course there, by and along the aforesaid mead, in which, &c. without any obstruction or impediment whatsoever. Nevertheless the aforesaid *J.* not ignorant of the premises, designing and maliciously intending unjustly to aggrieve and injure him the said *B.* and to molest, hurt and damnify him in the use, possession and occupation of his said meadow ground, and to deprive him of the greatest part of the profit thereof, on the said first day of *August*, in the year aforesaid, did anew erect and make a certain dam across the said river, against the aforesaid mead, called *Ogher Mead*, and hath continued the same from thence hitherto, and hath thereby so obstructed, stopped up and heightened the water of the said river, that by reason and means thereof, the water of the said river, afterwards, that is to say, on the tenth day of *August*, in the year aforesaid, and on divers other days and times between that day and the first day of *October*, in the year of our Lord one thousand seven hundred and thirty six, hath overflowed and covered the said meadow ground of the said *B.* whereby not only a great quantity, that is to say, one hundred loads of manure, called malm, of the said *B.* to the value of twenty pounds, within the time aforesaid, dug, laid and placed by the said *B.* in his said meadow ground there, hath been washed away, consumed and lost; but also the said *B.* hath been greatly damnified in his possession and occupation of the said meadow ground, and

for

for all the time aforesaid, hath lost the greatest part of the profit, use and advantage of his said meadow ground, to the damage of the said *B.* of fifty pounds, and thereupon he bringeth suit, &c.

J. C. late of, &c. was attached to answer unto *T. F.* of a plea of trespass on the case, &c. And thereupon the said *T.* by his attorney, complains, THAT WHEREAS there now is, and from time immemorial there hath been an ancient and laudable custom, used and approved of by and amongst merchants and other persons residing, trading and using commerce in parts beyond the seas, and merchants and other persons residing, trading and using commerce within this kingdom of *England*, to wit, that if any merchant or other person residing, trading and using commerce in parts beyond the seas, shall have made any bill of exchange in writing, with his own proper hand thereto subscribed, and shall have directed such bill to any merchant or other person or persons residing, trading and using commerce within this kingdom of *England*, and by such bill shall have required such merchant or merchants, or such other person or persons to whom such bill shall have been directed, to pay to any other merchant or other person residing and using commerce in parts beyond the seas, and named in such bill or order any sum of money in such bill mentioned, at any time mentioned in such bill, and appointed by such bill for the payment thereof; and if such merchant or merchants, person or persons, to whom such bill shall have been directed, upon sight of such bill shall have refused to accept such bill, or to pay such sum of money in such bill mentioned, at the time mentioned in such bill for the payment thereof, to such merchant or other person to whom or whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid; and if such merchant or other person to whom or whose order such sum of money in such bill mentioned

Declaration upon a foreign bill of exchange drawn on two merchants here, and laid three different ways by drawee against drawer.

tioned by such bill, shall have been appointed to be paid, shall have caused such bill to be protested in writing for such non acceptance or non payment thereof, then such merchant or other person who shall so have made such bill, upon notice of such non acceptance or non payment and protest, hath for all the time aforesaid been liable, and hath been used and accustomed to be liable, and for all the time aforesaid hath and ought to have been liable, and still is liable to pay unto such merchant or other person named in such bill, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been so appointed to have been paid.

AND WHEREAS at the several times hereafter next mentioned, the said J. and T. were persons residing, trading and using commerce in parts beyond the seas, to wit, at St. Martin's in the kingdom of France, and one Philip Cantillon and David Cantillon, were persons residing, trading and using commerce within this kingdom of England, to wit, at London aforesaid, and the said Philip and David, were then and there partners in their said commerce, and being so respectively residing, trading and using commerce as aforesaid, the said J. on the third day of April, in the year of our Lord one thousand seven hundred and thirty two, new style, in parts beyond the seas, to wit, at St. Martin's aforesaid, in the kingdom of France, made his certain bill of exchange in writing, with his own proper hand thereto subscribed according to the custom aforesaid, and then and there directed the bill, bearing date the same day and year, to the said Philip and David. And by the said bill requested the said Philip and David at two usances to pay that his first bill of exchange to the said T. or order seventy five pounds, eighteen shillings, sterling, value received of the said T. and for balance of his the said J's accounts with the said Philip and David, as by advice from the said J. which said bill of exchange, he the said T. afterwards, to wit, on the sixteenth day of April, in the year of our Lord one thousand seven hundred and thirty two, English style, at London aforesaid, to wit, in the parish
of

of *St. Mary le Bow*, in the ward of *Cheap*, shewed to the said *Philip* and *David*, and then and there required, and the said *Philip* and *David* then and there refused to accept the said bill or any part thereof, by reason whereof he the said *T.* afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested in writing for such non acceptance thereof by the said *Philip* and *David*, of which said non acceptance of the said bill, and for the said protest of the said bill for the non acceptance thereof, he the said *T.* afterwards, to wit, on the seventeenth day of *April*, in the said year of our Lord one thousand seven hundred and thirty two, English style, at *London* aforesaid, in the parish and ward aforesaid, gave notice to the said *J.* by reason of which said premises, and according to the custom aforesaid, he the said *J.* became liable to pay to the said *T.* the said sum of money mentioned in the said bill, and being so liable he the said *J.* in consideration thereof, afterwards to wit, the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him the said sum of money mentioned in the said bill, when he should be afterwards thereto requested.

AND WHEREAS the said *J.* and *T.* and *Philip* and *David* being, &c. respectively residing, trading and using commerce as aforesaid, and the said *Philip* and *David* being partners in their said commerce as aforesaid, the said *J.* afterwards, to wit, on the said third day of *April*, in the year of our Lord one thousand seven hundred and thirty two aforesaid, new style, in parts beyond the seas, to wit, at *St. Martin's* aforesaid, in the said kingdom of *France*, made his certain other bill of exchange in writing, subscribed with his own proper hand according to the said custom, and the said last mentioned bill, bearing date the same day and year last aforesaid, directed to the said *Philip* and *David*, and by the said last mentioned bill, required the said *Philip* and *David* at two usances to pay that his first bill of exchange to the said *T.* or order, other seventy five pounds, ten shillings,

shillings, sterling, value received of him the said T. and for balance of his the said J.'s accounts with the said P. and D. as by advice from the said J. which said last mentioned bill of exchange, he the said T. afterwards, to wit, on the twenty sixth day of *May*, in the year of our Lord one thousand seven hundred and thirty two aforesaid, English style, at *London* aforesaid, in the parish and ward aforesaid, shewed to the said P. and D. for their acceptance and payment thereof, and then and there required the said P. and D. to accept to pay the said last mentioned bill, according to the tenor of the same bill and the custom aforesaid, and the said P. and D. then and there refused to accept the said last mentioned bill or any part thereof, by reason of which said last mentioned premises, he the said T. afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, caused the said last mentioned bill to be duly protested in writing for such non acceptance and non payment thereof by the said P. and D. of which said non acceptance and non payment of the said last mentioned bill, and of the last mentioned protest of the said last mentioned bill for the said non acceptance and non payment thereof, he the said T. afterwards, to wit, on the said twenty sixth day of *May*, in the year of our Lord one thousand seven hundred and thirty two aforesaid, English style, at *London* aforesaid, in the parish and ward aforesaid, gave notice to the said J. by reason whereof, and according to the custom aforesaid, he the said J. became liable to pay to the said T. the said sum of money contained in the said last mentioned bill, and being so liable, he the said J. in consideration thereof, afterwards, the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said T. to pay him the said sum of money mentioned in the said last mentioned bill, when he should be afterwards thereto requested.

AND WHEREAS at the several times hereafter mentioned, the said J. and T. and P. and D. were persons

sons residing, trading and using commerce within this kingdom of *England*, to wit, at *London* aforesaid, in the parish and ward aforesaid, and the said *P.* and *D.* were then and there partners in their said commerce; and being so residing, trading and using commerce, the said *J.* afterwards, on the third day of *April*, in the year of our Lord one thousand seven hundred and thirty two, at *London* aforesaid, in the parish and ward aforesaid, made his certain other bill of exchange in writing, subscribed with his own proper hand according to the custom of merchants, from time immemorial, used and approved of; and the said last mentioned bill, bearing date the same day and year last aforesaid, directed to the said *P.* and *D.* and by the said last mentioned bill required the said *P.* and *D.* at two usances, to pay that his first bill of exchange to the said *T.* or order, other seventy five pounds, eighteen shillings, sterling, value received of the said *T.* and for balance of his the said *J.*'s accounts with the said *P.* and *D.* as by advice from the said *J.* which said last mentioned bill of exchange, the said *T.* afterwards, to wit, on the sixth day of *June*, in the year of our Lord one thousand seven hundred and thirty two aforesaid, at *London* aforesaid, in the parish and ward aforesaid, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said last mentioned bill according to the said custom, but the said *P.* and *D.* then and there wholly refused to accept the said last mentioned bill, or even to pay to the said *J.* the said sum of money specified in the said last mentioned bill, or any part thereof, of which said last mentioned premises, he the said *J.* afterwards, to wit, on the eighteenth day of *June*, in the year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, had notice, by reason of which said last mentioned premises, and according to the said custom and by the law of merchants, he the said *J.* became liable to pay to the said *T.* the said sum of money specified in the said last mentioned bill, and being so liable, he the said *J.* in consideration thereof, afterwards, the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid,

said, undertook and then and there faithfully promised the said *T.* to pay him the said sum of money contained in the said last mentioned bill when he should be afterwards thereto requested. (*A common count for money lent and advanced, another for money had and received, another for money paid, laid out and expended*). Yet the said *J.* not regarding his said several promises and undertakings, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *T.* in this particular, hath not yet paid the several sums of money or any part thereof to the said *T.* (although to do this he the said *J.* afterwards, to wit, on the same day and year last aforesaid, and often afterways at *London* aforesaid, in the parish and ward aforesaid, by the said *T.* was requested) but he to pay the same to him hitherto wholly hath and still doth refuse to the said *T.* his damage of one hundred and twenty pounds, and therefore he brings his suit, &c. with this that the said *T.* will verify that two usances mentioned in any bill of exchange made at *St. Martin's* aforesaid, are and were and at the time of making the several bills aforesaid, were and meant two months from the date of such bill or bills, and not any other or different times, &c.

Declaration
by three ex-
ecutors
against a
goaler for a
hundred
court, for a
rescue of a
prisoner, in
which the
whole pro-
ceedings are
recited.
Robinson.

Cornwall, } *T. F.* late of *M.* in the county of *Corn-*
to wit. } *wall*, yeoman, bailiff of his Majesty's
court of the hundred and liberties of *P.* in the county
of *Cornwall*, was attached to answer to *E. A.* gent.
and *C.* his wife, *J. P.* gent. and *M.* his wife, and
C. P. gent. and *M.* his wife, which said *C. M.* and
Mary are the executrixes of the last will and testament
of *C. N.* widow, deceased, of a plea of trespass upon
the case. And whereupon the said *E. L.* and *C.* his
wife, *J. P.* and *M.* his wife, *C. P.* and *M.* his wife
by their attorney, complain, THAT WHEREAS
one *Wm. H.* late of *B.* in the said county of *Cornwall*,
gent, in the lifetime of the said *C. N.* to wit, on the
sixteenth day of *February*, in the year of our Lord
one thousand seven hundred and thirty, at *B.* aforesaid,
and

and within the jurisdiction of the said court of the said hundred and liberties of *P.* aforesaid, was justly indebted to the said *C. N.* in the full sum of fourteen pounds seventeen shillings, of lawful money of *Great-Britain*, as well for money of the said *C. N.* by the said *Wm. H.* at *B.* aforesaid, and within the jurisdiction of the said court before that time, had and received to the use of the said *C. N.* and for other money by the said *C. N.* before that time, at *B.* aforesaid, and within the said jurisdiction, lent and accommodated to the said *Wm. H.* and at his request, as also for divers goods, wares and merchandizes by the said *C. N.* to the said *Wm. H.* before that time, at *B.* aforesaid and within the said jurisdiction, sold and delivered, and which said sum of fourteen pounds seventeen shillings, was due, owing and unpaid by the said *Wm. H.* to the said *C. N.* at the time of her death.

AND WHEREAS after the death of the said *C. N.* to wit, on the sixteenth day of *February*, in the year of our Lord one thousand seven hundred and thirty one, at *B.* aforesaid, and within the jurisdiction of the court of the said hundred and liberties of *P.* aforesaid the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *M.* his wife, and the said *Wm. H.* accounted together of and concerning the money so as aforesaid due from the said *Wm. H.* to the said *C. N.* at the time of her death, and upon that account the said *Wm. H.* was found to be really and justly indebted and in arrear to the said *C. N.* at the time of her death, in the sum of fourteen pounds, seventeen shillings; and thereupon the said *Wm. H.* then and there did make and sign a note in writing, called a promissory note, signed with his own hand, and dated the said sixteenth day of *February*, one thousand seven hundred and thirty one; and the said *Wm. H.* did thereby acknowledge, that by an account passed that day he was indebted to the executrix of the said *C. N.* in the said sum of fourteen pounds, seventeen shillings, which said sum he did thereby promise to pay to the said executors or their order, at or before the twenty fifth day of *March* then next ensuing.

AND

AND WHEREAS afterwards at the court of record of our lord the King, held at *M.* for the said hundred and liberties of *P.* in the said county of *Cornwall*, on the sixth day of *November*, one thousand seven hundred and thirty three, before *F. P.* gent. steward of the court of the said hundred and liberties of *P.* by virtue of and under several royal grants and charters for that purpose heretofore made and granted, the said debt or sum of fourteen pounds, seventeen shillings, or any part thereof not being then paid or satisfied (the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *M.* his wife) the said *C. M.* and *Mary* being the executrixes of the last will and testament of the said *C. N.* deceased, for the obtaining and receiving of the said sum of fourteen pounds, seventeen shillings, so due and owing to them as aforesaid, did levy their plaint in the said court of the said hundred and liberties of *P.* against the said *Wm. H.* in a plea of trespass upon the case, to their damage of twenty pounds; and they then and there found pledges to prosecute the said plaint, to wit, *John Doe* and *Richard Roe*, and did then and there put in their places *Wm. R.* their attorney, against the said *Wm. H.* of the said plea, and by their said attorney did then and there in the said court then and there held, pray process to be thereupon made against the said *Wm. H.* &c. and it was granted to them, &c. whereby it was commanded to *J. M.* then one of the officers and ministers of the said court, that he should attach the said *Wm. H.* by his goods and chattels within the jurisdiction of the said court, so that the said *Wm. H.* should be and appear at the same court, held the said sixth day of *November*, one thousand seven hundred and thirty three, at aforesaid, to answer to the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *Mary* his wife (the said *C. M.* and *Mary* being the executrixes of the last will and testament of the said *C. N.*) of the plea aforesaid, and what he should do thereon he the said *J. M.* should certify to the said court then and there held; and afterwards at the said court held aforesaid, the said

J. M. did thereupon return and certify to the same court, that the said *Wm. H.* was not found within the jurisdiction of the said court, nor had any thing within the jurisdiction of the said court whereby he could be attached; and thereupon afterwards at the same court then and there held as aforesaid, at the prayer of the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, by their said attorney by precept, it was commanded by the said court to the said *J. M.* then and there one of the officers and ministers of the said court, that he should take the said *Wm. H.* by his body if he should be found within the jurisdiction of the said court, and him should safely keep, so that he should have his body at the next court to be held at *W.* aforesaid, in and for the hundred and liberties of *P.* on the twenty seventh day of *November* then next, to answer to the said *E. L.* and *C.* his wife, *J. P.* and *W.* his wife, and *C. P.* and *Mary* his wife, of the said plea, which said precept afterwards, and before the said then next court, to wit, on the said sixth day of *November*, one thousand seven hundred and thirty three, at *P.* aforesaid, and within the jurisdiction of the said court was delivered to the said *J. W.* to be executed in due form of the law, by virtue of which said precept afterwards and before the said then next court, to wit, on the seventh day of *November*, one thousand seven hundred and thirty three, at *P.* aforesaid, and within the jurisdiction of the said court, the said *J. W.* did take and arrest the said *Wm. H.* by his body and had him in his custody, and the said *Wm. H.* being so arrested, and in the custody of the said *J. W.* by virtue of the said precept, at the next court held at *W.* aforesaid, in and for the said hundred and liberties of *P.* on the twenty seventh day of *November*, one thousand seven hundred and thirty three, before the said *F. P.* then steward of the said court, the said *E. L.* and *C.* his wife, *J. P.* and *W.* his wife, and *C. P.* and *Mary* his wife, appeared by their attorney, and the said *J. W.* then and there returned and certified upon the precept last mentioned to him directed,

directed, that by virtue thereof he had taken and arrested the said *Wm. H.* whose body he had then and there ready as it was thereby commanded him, and the said *Wm. H.* being then and there present in court, was then and there committed by the same court, for the want of sufficient manucaptors, to the custody of the said *T. F.* then and there bailiff of the said hundred and liberties of *P.* and the minister of the said court and the keeper of the goal of and belonging to the said court, and to whom the custody of the prisoners committed by the said court, did then and there belong and appertain, to answer to the said *E. L.* and *C.* his wife, *J. P.* and *W.* his wife, and *C. P.* and *Mary* his wife, in the said plea, according to the usage and custom of the said court, and the said *T. F.* then and there undertook and detained in his custody the said *Wm. H.* for the said cause, and the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *Mary* his wife, then and there, at the same court by the said *Wm. H.* their attorney, declared in the said plea against the said *Wm. H.* FOR THAT WHEREAS the said *Wm. H.* the sixteenth day of *February*, in the year one thousand seven hundred and thirty one, at *P.* within the jurisdiction of the same court, did make a certain note in writing, called a promissory note, subscribed with his own proper hand, bearing date the same day and year last above mentioned, and thereby the said *Wm. H.* did acknowledge himself to be indebted to the said executrixes of the said *C. N.* the sum of fourteen pounds, seventeen shillings, which he by the said note promised to pay to the said executors of the said *C. N.* or their order, at or before the twenty fifth day of *March* then next, with interest, by reason of which said note, and also by force of the statute in that case made and provided, the said *Wm. H.* became liable to pay to the executrixes the said fourteen pounds, seventeen shillings, mentioned in the said note according to the tenor and effect thereof, and being so liable the said *Wm. H.* in consideration thereof afterwards, to wit, the same day and year last mentioned, at *P.*
afore.

aforesaid, within the jurisdiction of the same court, took upon himself, and then and there faithfully promised to pay the said fourteen pounds, seventeen shillings, according to the tenor of the said note; yet the said *Wm. H.* his promise aforesaid, in form aforesaid made, not regarding, but intending subtilly and craftily to defraud the said plaintiff of the said money, had not paid the same or any part thereof to the said plaintiff although often requested so to do, to the damage of the said plaintiff of twenty pounds, and thereupon they brought suit, &c. and it was in such manner proceeded thereupon, that afterwards at the court of the said hundred and liberties of *P.* held at *M.* in and for the said hundred and liberties of *P.* on the twelfth day of *March*, in the said year one thousand seven hundred and thirty three, before *F. P.* then steward of the same court, it was considered and adjudged by the same court, that the same *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *Mary* his wife, should recover against the said *Wm. H.* the sum of fourteen pounds, seventeen shillings, for their damages which they had sustained by reason of not performing of the said promise, and that the said *Wm. H.* should be in mercy and so forth, which said judgment is now in full force and virtue, not reversed, annulled, vacated or satisfied, as by record of the said proceedings and judgment now remaining in the same court of the said hundred and liberties of *P.* it more fully appears; yet the said *T. F.* well knowing the premises, and not regarding the duty of his said office, but fraudulently and cunningly contriving and intending to hinder and prevent the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife from having and receiving the said damages and costs by them recovered as aforesaid, and to hinder and prejudice them in that behalf, the said *Wm. H.* being in the custody of the said *T. F.* as aforesaid, the said *T. F.* afterwards, to wit, on the twelfth day of *March*, one thousand seven hundred and thirty three, at *P.* aforesaid, without the consent and against the will of the said *E. L.* and *C.*

his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife (he the said *T. F.* then being the keeper of the said goal, and to whom the custody of the prisoners committed by the same court did belong, at aforefaid) did permit and suffer the said *Wm. H.* to escape and go at large, wherever he the said *Wm. H.* would (the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, or any of them not being in any wise satisfied of the said damages and costs as aforefaid recovered or any part thereof) and the said *Wm. H.* hath ever since concealed himself in places unknown to the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, by reason whereof they have not only lost the said damages and costs by them recovered as aforefaid, and have been put to great charges and expences, but have also lost the benefit of the said judgment, and could not charge the said *Wm. H.* in execution upon the said judgment.

AND ALSO WHEREAS at the court of record of our said lord the king, held at *M.* in and for the said hundred and liberties of *P.* on the said twelfth day of *March*, in the said year one thousand seven hundred and thirty three, before the said *F. P.* then steward of the said court, the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *Mary* his wife (which said *C. M.* and *Mary* are the executrixes of the last will and testament of *C. N.* deceased) by the judgment of the same court did recover against the said *Wm. H.* other fourteen pounds, seventeen shillings, for their damages which they sustained by reason of not performing of another promise of the said *Wm. H.* by the said *Wm. H.* within the jurisdiction of the same court, made to the said *C. N.* in her life time, and for their costs and charges laid out by them about their suit in that behalf, as by record thereof now remaining in the same court it doth more fully appear, which said judgment last mentioned, is now in full force and virtue, not reversed, annulled, vacated or satisfied. And the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, in fact

say,

say, that before and at the time of the giving of the said judgment last mentioned, to wit at the court last mentioned, then held as aforesaid, the said *Wm. H.* was by the same court then committed for want of manucaptors, to the custody of the said *T. F.* (then and there and now the bailiff of the said hundred and liberties of *P.* and the minister of the same court, and the keeper of the goal of and belonging to the same court, and to whom the custody of the prisoners committed by the said court did then and there belong and appertain) to answer to the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *Mary* his wife, which said *C. M.* and *Mary* were the executrixes of the last will and testament of the said *C. N.* deceased, in the said plea last mentioned; and in and upon which plea last mentioned, the said judgment last mentioned was obtained; and the said *Wm. H.* at the time of the giving of the said judgment last mentioned, was in the custody of the said *T. F.* by virtue of and under the said commitment last mentioned and for the cause last mentioned; yet the said *T. F.* well knowing the premises last mentioned, and not regarding the duty of the said office, but fraudulently and cunningly contriving and intending to hinder and prevent the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, and *C. P.* and *Mary* his wife, from the having and receiving the said damages and costs last mentioned, recovered by them as aforesaid, and to injure and prejudice them in that behalf, and to deprive them of the benefit of the judgment last mentioned, the said *Wm. H.* being so in custody of the said *T. F.* as last above mentioned (the said *T. F.* after the giving of the judgment last mentioned, to wit, on the fourteenth day of *March*, one thousand seven hundred and thirty three, at *P.* aforesaid, without the consent and against the will of the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, he the said *T. F.* then being the keeper of the said goal, to whom the custody of the prisoners committed by the said court last mentioned did belong as aforesaid) did permit and suffer the

DECLARATIONS, PLEADINGS, &c.

said *Wm. H.* to escape and go at large wherever he the said *Wm. H.* would (the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife or any of them, not being in any wise paid or satisfied of the said last mentioned damages or costs as aforesaid recovered, or any part thereof) and the said *Wm. H.* hath ever since hid and concealed himself in places unknown to the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, by means whereof they have not only lost the last mentioned damages and costs by them recovered as aforesaid, and have been put to great charges and expences, but have also lost the benefit of the judgment last mentioned, and could not charge the said *Wm. H.* in execution on the said judgment last mentioned, to the damage of the said *E. L.* and *C.* his wife, *J. P.* and *M.* his wife, *C. P.* and *Mary* his wife, of forty pounds, therefore they bring this suit, &c. and bring here into court the letters testamentary of the said *C. N.* deceased, by which it sufficiently appears to the court, that the said *C. M.* and *Mary* are the executrixes of the last will and testament of the said *C. N.* deceased, and have administration thereof.

A declaration against defendant for plaintiff joining with him in a note to pay several sums to several persons (which defendant promised to indemnify him from) whereby plaintiff was prosecuted and was obliged to pay part of it, and also to be answer-

J. H. complains of *R. P.* being, &c. FOR THAT WHEREAS upon the seventeenth day of *February*, in the year of our Lord one thousand seven hundred and thirty five, at in the county aforesaid, in consideration that the said *J. H.* at the especial instance and request of the said *R. P.* and for the proper account of the said *R. P.* has signed a promissory note for one hundred and sixty six pounds, thirteen shillings and four pence, payable to *J. D. Esq;* another for twenty seven pounds, ten shillings, payable to *R. P.* another for thirty pounds, to *Guest* and *Efford*, absolute, and to be answerable likewise for any bills drawn by the said *R. P.* to the said *Guest* and *Efford* in case they should come back unpaid, he the said *R. P.* acknowledged that all the above notes were for his proper account, and then and there took upon himself and faithfully promised the said

said *J. H.* to repay him as much money as he the said *J. H.* should pay for and towards the same; and the said *J. H.* in fact saith, that afterwards, to wit, upon the eighteenth day of *April*, in the year of our Lord one thousand seven hundred and thirty seven, at afore said, he the said *J. H.* paid for and toward the said note above mentioned to be payable to the said *R. P.* a large sum of money, to wit, the sum of sixteen pounds, one shilling and four pence, of lawful money of *Great Britain*, whereof the said *R. P.* afterwards, to wit, upon the same day and year, at afore said, had notice.

able for any
bills drawn
by defen-
dant on
*Guest and
Efford.
Serjeant
Draper.*

AND WHEREAS ALSO afterwards, to wit, upon the seventeenth day of *February*, in the year of our Lord one thousand seven hundred and thirty five, at afore said in consideration that the said *J. H.* at the like instance and request of the said *R. P.* and for the proper debt and account of the said *R. P.* had therefore, to wit, upon the twentieth day of *September*, in the year of our Lord one thousand seven hundred and thirty five, together with the said *R. P.* made and signed a note in writing, called a promissory note, whereby they the said *R. P.* and *J. H.* acknowledged themselves to be indebted unto *Rd. P. of T.* the sum of twenty seven pounds of British money, for value received, which sum they or either of them promised to pay to him or his assigns on demand, whereby and by force of the statute in such case made and provided, the said *J. H.* became liable to pay to the said *Rd. P. of T.* or his assigns the said twenty seven pounds in the last note mentioned, he the said *R. P.* took upon himself, and then and there faithfully promised the said *J. H.* to pay him as much money as the said *J. H.* should pay for or towards the same note last above mentioned; and the said *J. H.* in fact saith, that he the said *J. H.* afterwards, to wit, upon the eighteenth day of *April*, in the said year one thousand seven hundred and thirty seven, at afore said, paid for and towards the said note last mentioned, another large sum of money, to wit, another sum of sixteen pounds, one shilling and four pence,

DECLARATIONS, PLEADINGS, &c.

pence, of like lawful money, whereof the said *R. P.* then and there had notice.

AND WHEREAS ALSO afterwards, to wit, upon the said seventeenth day of *February*, in the said year one thousand seven hundred and thirty five, at aforesaid, in consideration that the said *J. H.* at the like instance and request of the said *R. P.* and for the proper debt and account of the said *R. P.* had then and theretofore, to wit, upon the twentieth day of *September*, in the said year one thousand seven hundred and thirty five, together with the said *R. P.* made and signed another note in writing, called a promissory note, whereby the said *R. P.* and *J. H.* acknowledged themselves to be indebted unto the said *Rd. P.* of *T.* another sum of twenty seven pounds of like British money, for value received, which sum they or either of them promised to pay to him or his assigns on demand, whereby and by force of the said statute, the said *J. H.* became liable to pay to the said *R. P.* or *T.* or his assigns, the said twenty seven pounds in the said last note mentioned, he the said *R. P.* took upon himself, and then and there faithfully promised the said *J. H.* that he the said *Rd. P.* would bear harmless and indemnify the said *J. H.* from and on account of the said note last above mentioned; and the said *J. M.* in fact saith, that the said *Rd. P.* in the said last note named afterwards, to wit, upon the day of in the year of our Lord at aforesaid, impleaded the said *J. H.* in his present Majesty's court, of the borough of in a plea of trespass on the case for the money then remaining due upon the said note last mentioned; and the said *J. H.* by reason thereof was obliged to pay, and then and there did pay to the said *Rd. P.* a large sum of money, to wit, the sum of nine pounds, twelve shillings and one penny, then remaining due on the same note; and also the further sum of two pounds, nineteen shillings and four pence, for the said *Rd. P.*'s costs of the said suit. And the said *J. H.* by reason thereof was also obliged to expend and

and lay out, and did then and there expend and lay out a further sum of money, to wit, the sum of three pounds, nine shillings and eleven pence, in and about his defence in that behalf, of all which premises the said R. P. afterwards, to wit, upon the same day and year last above mentioned, at

aforesaid, had notice.
—A common count for money paid, laid out and expended, and the like conclusion.

J. B. complains of J. W. being, &c. FOR THAT Declaration WHEREAS he the said J. B. before the making of the for the breach of a promise and undertaking next hereafter mentioned, to promise wit, on the sixteenth day of May, in the year of our Lord one thousand seven hundred and thirty five, at where plaintiff had been possessed of goods in the county aforesaid, had been possessed of goods the goods and chattels following, to wit, eight hundred cart loads of tin stuff, and five hundred cart loads of which defendant converted to his own use, copper ore, as of his own proper goods and chattels, and on and being so possessed, he the said J. B. afterwards, to plaintiff's undertaking wit, the same day, year and place, had casually lost the said goods and chattels out of his hands and possession, ing not to bring an action against him for the said goods yet the said J. W. well knowing the said goods and chattels to have been the proper goods and chattels of the defendant promised to pay him as much as they were worth. said J. B. and of right to have belonged and appertained to the said J. B. yet contriving and fraudulently intending to deceive and defraud the said J. B. in this particular, hath not delivered the said goods and chattels or any part thereof to the said J. B. (although often requested) but he the said J. W. afterwards, before the making of the said promise and undertaking hereafter next mentioned, to wit, on the same day and year above said, at aforesaid, had wrongfully and injuriously converted, and disposed of the said goods and chattels to his own use, whereupon the said J. B. for the recovery of his damages which he had sustained on occasion of the said conversion of the said goods and chattels

Warren.

Bidwell
against
Cotton.

Hob. Rep.
216.

chattels to the use of the said *J. W.* in the manner as
 aforesaid, at aforesaid, intended to commence
 and prosecute a suit at law against the said *J. W.* where-
 of the said *J. W.* afterwards, to wit, on the eleventh
 day of *May*, in the year of our Lord one thousand seven
 hundred and thirty five, at aforesaid, had notice.
 And thereupon the said *J. W.* afterwards, to wit, on the
 eleventh day of *May*, in the year aforesaid, at
 aforesaid, in consideration that the said *J. B.* at the special
 instance and request of the said *J. W.* would not commence
 or prosecute any suit at law against the said *J. W.* on ac-
 count of the said premises, but at the said request of
 the said *J. W.* would abstain and forbear the commence-
 ment and prosecution thereof, undertook, and then and
 there faithfully promised the said *J. B.* to pay him so
 much money as the said goods and chattels at the said
 time of the said *J. W.* his converting thereof to his own
 use as aforesaid, were reasonably worth; and the said
J. B. in fact saith, that he confiding in the aforesaid
 promise of the said *J. W.* to the said *J. B.* at any time
 hitherto hath not commenced or prosecuted any suit of
 law against the said *J. W.* on account of the said pro-
 mise, but at the said request of the said *J. W.* hath
 hitherto wholly abstained and forbore the commence-
 ment and prosecution thereof; and that the said goods
 and chattels at the said time of the said *J. W.* his con-
 verting thereof to his own use as aforesaid, were rea-
 sonably worth forty pounds, to wit, at aforesaid,
 whereof the said *J. W.* there had notice.

AND WHEREAS afterwards, to wit, on the sixteenth
 day of *May*, in the year aforesaid, at aforesaid, in
 consideration that the said *J. W.* had before that time
 tortiously, injuriously and wrongfully converted and dis-
 posed of to his own use, divers other goods and chattels,
 to wit, eight hundred other cart loads of tin stuff, and five
 hundred other cart loads of copper ore of the said *J.*
B. and that the said *J. B.* at the special instance
 and request of the said *J. W.* had released to the
 said *J. W.* that last mentioned tort and wrong, he

the

the said *J. W.* undertook, and then and there faithfully promised the said *J. B.* to pay him so much money as the said last mentioned goods and chattels at the time of the said *J. W.* converting thereof to his own use as aforesaid, were reasonably worth; and the said *J. B.* doth aver, that the said last mentioned goods and chattels at the time of the said *J. W.* converting thereof to his own use as aforesaid, were reasonably worth other forty pounds, to wit, at aforesaid, whereof the said *J. W.* then and there had notice.

A common quantum meruit for divers other goods, wares and merchandizes sold and delivered, and the like conclusion.

A. E. complains of *M. H.* being, &c. **FOR** Declaration
 THAT WHEREAS upon the twenty eighth day of ^{on a wager}
March, in the year of our Lord one thousand seven ^{concerning}
 hundred and thirty five, at the parish of ^{the weight}
 the county aforesaid, a certain discourse was had by ^{in of hogs.}
 and between the said *A.* and the said *M.* of and ^{Serjeant}
 concerning the weight of nine young hogs of the said *A.* ^{Draper,}
 and upon that discourse the said *M.* then and there
 affirmed that the said hogs did not weigh seven pounds
 a piece one with the other, which the said *A.* then and
 there denied, affirming that the said nine hogs did
 weigh seven pounds a piece one with the other, and
 thereupon afterwards, to wit, upon the same day and
 year abovementioned, at the parish aforesaid, in con-
 sideration that the said *A.* at the special instance and
 request of the said *M.* then and there took upon him-
 self, and faithfully promised the said *M.* to pay him
 one guinea of lawful money of *Great Britain* if the
 said nine hogs did not weigh seven pounds a piece one
 with the other upon weighing the same the then next
 day, he the said *M.* took upon himself, and then and
 there faithfully promised the said *A.* to pay him one
 guinea of the like lawful money if the said nine
 hogs did weigh seven pounds a piece one with the
 other upon weighing the same the then next day;
 and the said *A.* in fact saith, that the said nine hogs
 upon

upon the then next day, to wit, upon the twenty ninth day of *March*, at the parish aforesaid, were weighed, and that the said nine hogs then and there upon weighing the same as aforesaid, weighed seven pounds a piece one with the other, whereof the said *M.* afterwards, to wit, upon the same day and year last abovementioned, at the parish aforesaid, had notice.

AND WHEREAS ALSO afterwards, to wit, upon the said twentieth day of *March*, in the year abovementioned, at the parish aforesaid, another discourse was had by and between the said *A.* and the said *M.* of and concerning the weight of nine other young hogs of the said *A.* and upon that discourse last mentioned, the said *M.* then and there affirmed that the said nine hogs last mentioned did not weigh seven pounds one with the other, which the said *A.* then and there denied, affirmed that the said nine hogs last above mentione, weighed seven pounds a piece one with the other; and thereupon afterwards, to wit, upon the same day and year last mentioned, at the parish aforesaid. in consideration that the said *A.* at the special instance and request of the said *M.* then and there took upon himself, and faithfully promised the said *M.* to deliver to him a certain mare of the said *A.* if the said nine hogs last abovementioned did not weigh seven pounds a piece one with the other upon the weighing the same the then next day, he the said *M.* took upon himself, and then and there faithfully promised the said *A.* to pay him four guineas of like lawful money, if the said nine hogs did weigh seven pounds a piece one with the other upon weighing the same the then next day; and the said *A.* in fact saith, that the said nine hogs last abovementioned, upon the then next day, to wit, upon the twenty ninth day of *March*, in the year aforesaid, at the parish aforesaid, were weighed, and that the said nine hogs last abovementioned, then and there weighing the same as aforesaid, weighed seven pounds a piece one with the other, whereof the said *M.* afterwards, to wit, upon the same day and year last abovementioned, at the parish aforesaid,

saith,

aid, had notice.—*A common count for money had and received, and the like conclusion.*

J. A. spinster, complains of *J. W.* being, &c. Declaration for non performance of a marriage contract.
 FOR THAT WHEREAS on the first day of *January*, in the year of our Lord one thousand seven hundred and thirty five, at in the county aforesaid, he the said *J.* then being sole and unmarried, in consideration that the said *J. A.* she being also then sole and unmarried, at the special instance and request of the said *J.* had then and there agreed and undertaken, and faithfully promised the said *J.* that she the said *J. A.* would take the said *J.* to her husband, within the said space of then next following, he the said *J.* undertook, and then and there faithfully promised the said *J. A.* that he the said *J.* would take to his wife the said *A.* within the space of then next following; and although the said *A.* confiding in the aforesaid promise and undertaking of the said *J.* hath always from thence hitherto refused to contract matrimony with any other man whatever, and still remains, and is sole and unmarried, and always from the time of making the promises and undertakings aforesaid, for the space of from thence next following, and always from thence afterwards hitherto (he the said *J.* then and for all the time aforesaid, and now being sole and unmarried) was ready and often within that time offered to take to her husband him the said *J.* yet the said *J.* not in the least regarding his aforesaid promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *A.* in this particular, hath not at any time within the said space of next after the making of the promises and undertakings aforesaid, or at any time afterwards hitherto, taken to his wife the said *A.* (although to do this he the said *J.* often within the said space of next after the making of the said promises and undertakings aforesaid, and often afterwards, at aforesaid, by the said *A.* was requested) but he the said *J.* to take to his wife the said *A.* hitherto wholly hath and still

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still doth refuse, to the said *A.* her damage of five hundred pounds, and therefore she brings her suit, &c.

E. G. widow complains of *R. S.* being, &c. For
 Declaration on an issue THAT WHEREAS on the first day of *June*, in the
 directed out year of our Lord one thousand seven hundred and
 of chancery whether a thirty six, at in the county aforesaid, a cer-
 bankrupt or tain discourse was had by and between the said *E.* and
 not. *R.* of and concerning a commission of bankrupt which
Serj. Dra- per. See the issued under the great seal of *Great Britain* the twenty
 plea, *post.* sixth day of *April*, in the ninth year of the reign of
 his said present Majesty, and bearing date the same
 day and year against the said *R.* on the petition of the
 said *E.* and whether the said *R.* was a trader within
 the meaning of the statutes in force concerning bank-
 rupts or any of them, at or before the said date and
 suing forth of the said commission against him or not,
 and upon that discourse being so had, the said *E.* did
 affirm, that the said *R.* was a trader within the meaning
 of the statutes in force concerning bankrupts or some
 of them, at or before the said date and suing forth of
 the said commission against him, which affirmation
 the said *R.* then and there did deny, upon which the
 said *E.* at the special instance and request of the
 said *R.* then and there did pay to the said *R.* ten
 pounds of lawful money of *Great Britain*, and in con-
 sideration thereof, the said *R.* took upon himself,
 and to the said *E.* then and there faithfully promised,
 that he the said *R.* would pay to the said *E.* twenty
 pounds of like lawful money, if he the said *R.* was a
 trader within the meaning of the statutes in force con-
 cerning bankrupts or any of them, at or before the
 said date and suing forth of the said commission; and
 the said *E.* doth aver, that the said *R.* was a trader
 within the meaning of the statutes in force concern-
 ing bankrupts or some of them, at or before the date
 and suing forth of the said commission, to wit, at
 aforesaid, in the county aforesaid, by which
 the said *R.* ought to pay the said *E.* the said twenty
 pounds. (*A common conclusion for the promise*).

W. A.

Wm. A. H. S. and *J. A.* complain of *Wm. P.* being, &c. FOR THAT WHEREAS the said *Wm. P.* on the first day of *March*, in the year of our Lord one thousand seven hundred and thirty six, at the county aforesaid, bought of the said *Wm. A. H.* and *J.* and one *E. H.* Esq; now deceased (in the lifetime of the said *E.* which said *E.* the said *Wm. A. H.* and *J.* have survived) thirteen cords and the half of another cord of cordwood of the said *Wm. A. H. J.* and *E.* at the rate or price of thirteen shillings a cord for every cord, and at and after that rate for the said half cord of cordwood, to be paid by the said *Wm. P.* to the said *Wm. A. H. J.* and *E.* for the same; and was then and there agreed by and between the said *Wm. A. H. J.* and *E.* and the said *Wm. P.* in the lifetime of the said *E.* that the said *Wm. A. H. J.* and *E.* should and would deliver the said cordwood so bought by the said *Wm. P.* of them to the said *Wm. A. H. J.* and *E.* when they should be thereto requested, and that he the said *Wm. P.* should and would within a little time next after the said sale thereof, fetch, take and carry away the said cordwood, and that the said *Wm. P.* at the time of his so taking and carrying away the same should pay unto them the said *Wm. A. H. J.* and *E.* the rate and price aforesaid, to be paid for the same.

Declaration
on a special
agreement
by three sur-
viving part-
ners against
defendant or
not carrying
away wood
and paying
the price
agreed on
for it.
Warren.

AND WHEREAS afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, in consideration that the said *Wm. A. H. J.* and *E.* in the lifetime of the said *E.* at the special instance and request of the said *Wm. P.* had undertaken, and then and there faithfully promised the said *Wm. P.* to perform and fulfil the said agreement in all things on their parts and behalf to be performed and fulfilled, he the said *Wm. P.* undertook, and then and there faithfully promised the said *Wm. A. H. J.* and *E.* in the lifetime of the said *E.* to perform and fulfil every thing in the said agreement contained on his part and behalf to be performed and fulfilled; and the said *Wm. A. H.* and *J.* in fact say, that the said *Wm. A. H. J.* and *E.* in the lifetime of the said *E.* always from the time of mak-

ing

ing the said agreement and promises aforesaid, at the time of the death of the said *E.* hitherto have been always ready to deliver the said cordwood and every part thereof to the said *Wm. P.* and have very often offered so to do, to wit, at aforesaid; yet the said *Wm. P.* not regarding his said promise and undertaking, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *Wm. A. H. J.* and *E.* in the lifetime of the said *E.* and the said *Wm. A. H.* and *J.* after the death of the said *E.* in this particular hath not yet fetched, taken or carried away the cordwood so bought by him the said *Wm. P.* bought of them the said *Wm. A. H. J.* and *E.* in the life time of the said *E.* as aforesaid, or any part thereof, or paid to them or any of them for the same or any part thereof, at or after the rate or price aforesaid, (although to fetch, take or carry away the said cordwood, and to pay for the same at and after the rate and price aforesaid, he the said *Wm. P.* afterwards, to wit, on the tenth day of *March*, in the year aforesaid, and often both before and afterwards at aforesaid, by the said *Wm. A. H. J.* and *E.* in the lifetime of the said *E.* and by the said *Wm. A. H.* and *J.* after the death of the said *E.* to wit, on the twenty third day of *May*, in the year of our Lord one thousand seven hundred and thirty seven, at aforesaid, was requested) but he to fetch, take and carry away the same hath hitherto wholly refused and still doth refuse.

A count for goods sold and delivered, and a quantum valebant for the same, with a conclusion to the said two last promises.

Declaration
by an attorney
against
a limner for
not drawing
plaintiff's
picture like
him according
to his undertaking.
W. erren.

R. C. gent. one of the attorneys of the court of our sovereign lord the now King, before the King himself present here in court in his proper person according to the liberties and privileges of the said court for such attorneys of the court aforesaid, from time immemorial used and approved of in the same court complains of *S. S.* being, &c. FOR THAT

WHEREAS

WHEREAS he the said S. now is, and for divers, to wit, three years now last past hath been a face painter and limner, and for all that time hath occupied and possessed the art or business of a face painter and limner, to wit, at *Westminster*, in the county aforesaid, and whilst he the said S. so followed the said art and business, that is to say, on the first day of *January*, in the year of our Lord one thousand seven hundred and thirty six, at *Westminster* aforesaid, in the county aforesaid, he the said S. pretending himself to be expert and knowing in the said art and business of a face painter and limner, he the said S. on the same day and year aforesaid, at *Westminster* aforesaid, in the county aforesaid, retained and employed the said S. to draw and paint, well, carefully, skilfully and artificially for the said R. a picture or limning of the said R. of the size commonly called, *kitcat* length, of a good likeness, and well and artificially resembling the said R. for a certain sum of money, to wit, the sum of four pounds, fourteen shillings and six pence, to be therefore paid by the said R. to the said S. and the said R. then and there paid to the said S. the said four pounds, fourteen shillings and six pence, for the drawing and painting of the said picture or limning of the said R. and the said S. then and there accepted and received of the said R. the said four pounds, fourteen shillings and six pence, for the drawing and painting the said picture or limning of the said R. and then and there undertook to draw and paint the said picture or limning well, carefully, skilfully and artificially, of a good likeness, resembling the said R. and although he the said S. afterwards, to wit, on the first day of *February*, in the year aforesaid, at *Westminster* aforesaid, in the county aforesaid, did draw and paint for the said R. a picture or limning of the said R. and then and there deliver the same to the said R. and although the said R. did in the drawing and painting thereof, sit to the said S. divers, to wit, ten times, to the intent that the said picture or limning might be drawn and painted well, carefully, skilfully and artificially, which said times of sittings

sittings were sufficient for that purpose, as the said *S.* then and there pretended to the said *R.* yet the said *S.* did not well, carefully, skilfully and artificially draw or paint the said picture or limning of a good likeness resembling the said *R.* but on the contrary, he the said *S.* in drawing or painting the said picture or limning, then and there so negligently, carelessly, unskilfully, ignorantly and inartificially behaved himself, that the said picture or limning was not drawn in the least like or resembling the said *R.* and the painting thereof was so ignorantly and inartificially done and performed, that the said picture or limning was and is of no use or value whatsoever.

Second, for
a picture in
miniature.

AND WHEREAS the said *S.* now is and for divers, to wit, three years now last past hath been a face painter and a limner as aforesaid, and for all that time hath occupied and possessed the art and business of a face painter and limner, to wit, at *Westminster* aforesaid, in the county aforesaid, and whilst he the said *S.* so followed the said art and business, that is to say, on the said first day of *January*, in the year of our Lord one thousand seven hundred and thirty six aforesaid, at *Westminster* aforesaid, in the county aforesaid, he the said *S.* pretending himself to be expert and knowing in the said art and business of a face painter and limner, he the said *R.* on the same day and year above said, at *Westminster* aforesaid, in the county aforesaid, retained and employed the said *S.* to draw and paint well, carefully, skilfully and artificially for the said *R.* a picture or limning in miniature of the said *R.* of a good likeness, and well and artificially resembling the said *R.* for a certain sum of money, to wit, one pound, eleven shillings and sixpence, to be paid by the said *R.* to the said *S.* and the said *R.* then and there paid to the said *S.* the said one pound, eleven shillings and sixpence, for the drawing or painting of the said last mentioned picture or limning of the said *R.* and the said *S.* then and there accepted and received of the said *R.* the said one pound, eleven shillings and sixpence, for the drawing and painting the said

saïd picture or limning in miniature of the saïd R. and then and there undertook to draw and paint the saïd picture or limning in miniature of the saïd R. well, carefully, skilfully and artificially, of a good likeness resembling the saïd R. and although he the saïd S. afterwards, to wit, on the saïd first day of *February*, in the year aforesaid, at *Westminster* aforesaid, in the county aforesaid, did draw and paint for the saïd R. a picture or limning in miniature of the saïd R. and then and there deliver the same to the saïd R. and although the saïd R. did in the drawing and painting thereof sit to the saïd S. divers, to wit, ten times, to the intent that the saïd picture or limning in miniature might be drawn and painted well, carefully, skilfully and artificially, which saïd last mentioned times of sitting were sufficient for that purpose, as the saïd S. then and there pretended to the saïd R. yet the saïd S. did not well, carefully or artificially draw or paint the saïd picture or limning in miniature of a good likeness resembling the saïd R. but on the contrary, he the saïd S. in the drawing or painting the saïd picture in miniature, then and there so negligently, carelessly, unskilfully, ignorantly and inartificially behaved himself, that the saïd picture or limning in miniature was not drawn in the least like or resembling the saïd R. and the painting thereof was so ignorantly and inartificially done and performed, that the saïd picture or limning in miniature was and is of no use or value whatsoever to the saïd R. his damage of twenty pounds, and therefore he brings this suit, &c.

S. S. complains of *S. P.* FOR THAT the saïd *S. P.* upon the first day of *August*, in the year of our Lord one thousand seven hundred and thirty seven, at in the county aforesaid, knowingly kept a dog accustomed to bite sheep, the saïd *S. P.* then and there well knowing that the saïd dog was accustomed to bite sheep, which dog upon the same day and year (then being the dog of the saïd *S. P.*) at aforesaid, in the county aforesaid, did so greatly bite divers sheep,

Declaration
for keeping
a dog accus-
tomed to
bite sheep,
which dog
bit plain-
tiff's sheep,
whereby
some of
them died.

H

to

DECLARATIONS, PLEADINGS, &c.

to wit, twenty ewe sheep and twenty lambs of him the said S. S. then and there found, that by the biting of the said dog, twelve ewe sheep of the said twenty ewe sheep of the price of twenty pounds, and ten lambs of the said twenty lambs of the price of ten pounds, then and there died, and the rest of the said ewe sheep and lambs were very much damaged, whereby the said S. S. says, that he is prejudiced and hath damage to the value of thirty pounds, and thereupon he brings his suit, &c.

Declaration
for stopping
up a well or
pool of wa-
ter which
plaintiff
used in his
house for
the water-
ing of his
cattle.

Drawn by
Warren
Perused by
Serj. Bootle.

R. C. complains of *J. H.* being in the custody of the marshal, &c. FOR THAT WHEREAS he the said *R.* on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty six, and before was, and from thence continually hitherto hath been, and still is lawfully possessed of and in a certain messuage with the appurtenances, situate, lying and being at the parish of *H. C.* in the county aforesaid, and hath had, and hath used and been accustomed to have, and for all the time aforesaid of right ought to have had the use, benefit and advantage of the water of a certain well or pool of water, lying and being in the King's highway, at the parish aforesaid, near to the said messuage, with the appurtenances, for his convenience and necessary uses and occasions in the said messuage with the appurtenances, and for watering of his cattle belonging and appertaining to the said messuage with the appurtenances; nevertheless the said *J.* knowing the premises, but intending and maliciously designing to prejudice, injure and aggrieve the said *R.* in this behalf, and to hinder and deprive him of the use, benefit, profit and advantage of the water of the said well or pool of water, on the first day of *April*, in the year of our Lord one thousand seven hundred and thirty seven, at the parish aforesaid, did wrongfully and maliciously fill and stop up with soil and other rubbish the said well or pool of water, whereby the said *R.* hath for a long time, to wit, from thence hitherto totally lost the use, benefit and advantage of the water of the said well or pool of water, to the said *R.* his damage

mage of forty pounds, and therefore he brings his
suit, &c.

J. G. late of, &c. was attached to answer to *R. S.* Declaration
in a plea of trespass on the case, &c. And where-
upon the said *R. S.* by his attorney, complains, for not ac-
cepting of
goods when
they were
sent ac-
cording to
agreement.
Hardcastle.
THAT WHEREAS on the twentieth day of *August*, in
the year of our Lord one thousand seven hundred and
thirty four, at in the county aforesaid, the said
J. G. in consideration that the said *R. S.* at the special
instance and request of the said *J. G.* had bargained and
sold to the said *J. G.* a great quantity, to wit, thirty
eight hundred weight and twenty pounds of tow of the
said *R. S.* and had assumed upon himself and faithfully
promised the said *J. G.* that he the said *R. S.* would
deliver to the said *J. G.* the said tow at *B.* in the coun-
ty aforesaid, assumed upon himself, and then and there
faithfully promised the said *R. S.* that he the said *J. G.*
would accept of the said *R. S.* the said tow at *B.* afore-
said, when he should be thereto requested by the said
R. S. and although the said *R. S.* afterwards, to wit,
on the first day of *September*, in the year aforesaid, had
the said tow at *B.* aforesaid ready to be delivered there
to the said *J. G.* according to the form and effect of
the said promise of the said *R. S.* whereof the said *J.*
G. then and there had notice from the said *R. S.* and
the said *R. S.* then and there was ready, and offered to
deliver to the said *J. G.* the said tow, and requested the
said *J. G.* to accept the same of him the said *R. S.* yet
the said *J. G.* in no wise regarding his said promises
and assumptions made in form aforesaid, but contriving
and fraudulently intending, craftily and subtilly to de-
ceive and defraud the said *R. S.* in this respect, has not
accepted from the said *R. S.* the said tow, but has hi-
therto refused and still refuses to accept the same from
the said *R. S.*

AND WHEREAS the said *J. G.* on the said twen-
tieth day of *August*, in the said year of our Lord one
thousand seven hundred and thirty four, at
aforesaid, in consideration that the said *R. S.* at the
special instance and request of the said *J. G.* as-
sumed

fumed upon himself, and then and there faithfully promised the said *J. G.* that he the said *R. S.* would deliver to the said *J. G.* for the use of the said *J. G.* at *B.* aforesaid, certain other tow belonging to the said *R. S.* that is to say, other thirty eight hundred weight and twenty pounds of tow of the said *R. S.* assumed upon himself; and then and there faithfully promised the said *R. S.* that he the said *J. G.* would accept from the said *R. S.* the said last mentioned tow at *B.* aforesaid, when he should be thereunto requested by the said *R. S.* and would pay to the said *R. S.* for the same, after the rate of eight shillings and sixpence by the hundred weight, and although the said *R. S.* afterwards, to wit, on the said first day of *September*, in the year aforesaid, had the said last mentioned tow at *B.* aforesaid, and was ready then and there to deliver the same to the said *J. G.* and then and there gave notice thereof to the said *J. G.* and offered to deliver to him the same, and requested the said *J. G.* to accept the said last mentioned tow from him the said *R. S.* and also to pay to the said *R.* the rate aforesaid so to be paid for the same as aforesaid, yet the said *J. G.* not regarding his last mentioned promise and assumption made in form aforesaid, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *R. S.* also in this respect, did not accept from the said *R. S.* the said last mentioned tow, nor pay to the said *R. S.* the said rate to be paid for the same as aforesaid or any part thereof.

A common count for tow sold and delivered, and a quantum valebant for the same. A common count for tow bargained and sold by plaintiff to defendant, and a quantum meruit thereto. A common conclusion for the four last mentioned promises.

Declaration
for putting
of horse high
and opposite
to plaintiff's
quay in the
river of
Thames.

T. C. J. C. J. W. and Wm. V. complain of *Wm. C. S. R. and Wm. L.* being, &c. FOR THAT WHEREAS the said *T. C. J. W. J. C. and Wm. V.* on the twenty third day of *November*, in the year of our Lord one thousand seven hundred and thirty six, and

and long before were, and from thence unto the day of exhibiting their bill in this behalf have been, and still are possessed of and in a certain ancient quay, called *Porters Quay*, with the appurtenances, situate and being in the parish of *St. Dunstan's* in the east, in the ward of the *Tower*, in *London* aforesaid, adjoining to a certain ancient navigable river there called the *Thames*, and very convenient for the lading and unlading of goods and merchandizes upon, and from ships, lighters and other vessels plying to the said quay for that purpose, and have taken, had and received, and of right ought to take, have and receive therefore, certain reasonable customs, duties or tolls of all ships, lighters and other vessels coming and mooring at the said quay, and lading and unlading their goods and merchandizes upon or from the said quay, then and also have had, and for all the time aforesaid of right ought to have had a passage for ships, lighters and other vessels, to come and sail from and out of the said river, to lade and unlade their goods and merchandizes from and upon the aforesaid quay without any impediment or obstruction; and also were at the same time possessed of divers, that is to say, ten lighters, then lying and being in the said river, then nigh unto the aforesaid quay, in order to be worked and employed in carrying of goods and merchandizes in and upon the said river between the said quay and ships and other vessels in the said river, for the profit and advantage of the said *T. C. J. C. J. W.* and *Wm. V.* nevertheless the aforesaid *Wm. C. S. R.* and *Wm. L.* not ignorant of the premises, but designing and maliciously intending the said *T. C. J. C. J. W.* and *Wm. V.* in this behalf unjustly to injure and damage, and to deprive and to hinder them of the whole use, benefit and advantage of the said passage, and of the profit and advantage of their said quay and lighters, on the said twenty third day of *November*, in the year aforesaid, did wrongfully and maliciously put and place them in the said river, nigh opposite to and against the aforesaid quay, divers, that is to say, ten hoys of them

of which defendant had the management, so close together that plaintiff's quay was broke up and no passage for vessels, &c. to go out and come into the said quay to unload, which likewise prevented plaintiff's lighters from sailing in and about the said river.

the

the said *Wm. C. S. R.* and *Wm. L.* then in the said river of *Thames*, whereof they then and there had the management, government and direction, in such manner, and so thick and close to each other, that all passage whatsoever for any ships, lighters or other vessels, to come or sail from and out of the said river unto the said quay, or from the said quay into the river aforesaid, was thereby totally stopt up and obstructed, and the said hoys then so put and placed did continue there for a long time, to wit, for the space of forty eight hours then and next following, whereby not only the said lighters of the said *T. C. J. C. J. W.* and *Wm. V.* then lying and being in the said river nigh unto the said quay as aforesaid, were for all the time aforesaid hemmed in and blocked up between the said hoys and quay, and were thereby so obstructed, that they could not come or be brought out from thence into the said river to be employed and worked there as aforesaid, but also divers merchants and other persons having within the time aforesaid ships, lighters and other vessels laden with goods and merchandizes in the said river to be unladen there who would have come to the aforesaid quay with their said ships, lighters and other vessels, and moored them, and would have unloaded their said goods and merchandizes at and upon the said quay, were by reason of the said obstruction and impediment abovementioned, prevented, hindered and obstructed from coming to the said quay with the said lighters, ships and other vessels, and from unlading their goods and merchandizes there for a long time, to wit, for the said space of forty eight hours then next following, by reason and means whereof the said *T. C. J. C. J. W.* and *Wm. V.* have not only lost and been deprived of the use, benefit and employment of their said lighters for the time aforesaid, and the profit, benefit and advantage of the customs, duties and tolls which they might have got by the said lighters, ships and other vessels coming to the said quay, and unlading the said goods and merchandizes at the said quay, but also the greatest part of the profit, benefit

benefit and advantage of their said quay, for and during the time aforesaid, to the damage of the said *T. C. J. C. J. W.* and *Wm. V.* five hundred pounds, and thereupon they bring their suit, &c.

S. H. complains of *T. S.* in the custody of the marshal of the Marshalsea of our lord the King, before the King himself, FOR THAT WHEREAS on the twenty sixth day of *October*, in the year of our Lord one thousand seven hundred and thirty six, at in the county aforesaid, a discourse was had by and between the said *S.* and *J.* of and concerning certain hop grounds of and belonging to *P. H.* brother of the said *S.* and thereupon it was then and there agreed by and between the said *S.* and *J.* in manner and form following, to wit, that the said *S.* should sell and deliver, and the said *J.* should accept of the said *S.* as many hops as the said *P.* should have growing in his said hop ground, in the year of our Lord one thousand seven hundred and thirty seven, brown and bright, at five pounds, ten shillings per hundred, (at which rate the said *J.* then and there paid to the said *S.* one shilling in hand) and the said agreement being so made the said *S.* at the instance and request of the said *J.* afterwards, to wit, on the same day and year, at aforesaid, assumed upon himself, and then and there faithfully promised the said *J.* that he the said *S.* would well and faithfully perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled, and the said *J.* in consideration thereof afterwards, to wit on the same day and year, at aforesaid, assumed upon himself, and then and there faithfully promised the said *S.* that he the said *J.* would well and faithfully perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled; and the said *S.* in fact says, that the said *P.* had a crop of hops growing on his said hop grounds, in the said year of our Lord one thousand seven hundred and thirty seven, amounting to a great quantity, to wit, to twenty seven hundred, two quarters and nineteen pounds, brown and bright, and

Declaration
against de-
fendant for
not abiding
by his agree-
ment,
which was
to take all
the hops
that should
grow on a
piece of hop
ground of
plaintiff's
brother at a
certain
price agreed
on for it.
Hardcastle.

DECLARATIONS, PLEADINGS, &c.

and the said *S.* afterwards, to wit, on the third day of *November*, in the year of our Lord one thousand seven hundred and thirty seven aforesaid, at aforesaid, was ready and willing to sell and deliver to the said *J.* so many hops as the said *P.* had growing on his said hop grounds in that year, to wit, twenty seven hundred, two quarters and nineteen pounds of as good hops, brown and bright, at the rate aforesaid, according to the form and effect of the said agreement, and thereof afterwards, to wit, on the same day and year last abovementioned, at aforesaid, gave notice to the said *J.* and then and there requested the said *J.* to take and accept the said hops of the said *S.* at the rate aforesaid, according to the form and effect of the said agreement, nevertheless the said *J.* not regarding his said promise and assumption made in form aforesaid, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *S.* in this respect, did not accept the said hops so ready to be delivered to him as aforesaid by the said *S.* at the rate aforesaid, but has hitherto wholly refused and still doth refuse to accept the same of the said *S.*

AND WHEREAS on the said twenty-sixth day of *October*, in the said year of our Lord first abovesaid, at in the said county, a discourse was had by and between the said *S.* and *J.* of and concerning certain other hop grounds of and belonging to the said *P.* and thereupon it was then and there agreed by and between the said *S.* and *J.* in manner and form following, to wit, that the said *S.* should sell and deliver, and the said *J.* should accept of the said *S.* as many hops as the said *P.* should have growing in his said last mentioned hop grounds in the said year of our Lord one thousand seven hundred and thirty seven, brown and bright, after the rate of five pounds and ten shillings per hundred (of which rate the said *J.* had then and there paid to the said *S.* one shilling in part of payment) and the said last mentioned agreement being so made, the said *S.* at the instance and request of the said *J.* afterwards, to wit, on the same day and

and year first aboveſaid, at aforeſaid, aſſumed upon himſelf and then and there faithfully promiſed the ſaid J. that he the ſaid S. would well and faithfully perform and fulfil the ſaid agreement in all things on his part and behalf to be performed and fulfilled, and the ſaid J. in conſideration thereof, afterwards, to wit, on the ſame day and year firſt aboveſaid, at aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid S. that he the ſaid J. would well and faithfully perform and fulfil the ſaid laſt mentioned agreement in all things on his part and behalf to be performed and fulfilled; and the ſaid S. avers, that the ſaid P. had a crop of hops growing on his ſaid laſt mentioned hop ground in the year of our Lord one thouſand ſeven hundred and thirty ſeven, amounting to a great quantity, to wit, twenty ſeven hundred, two quarters and nineteen pounds, brown and bright; and the ſaid S. afterwards, to wit, on the ſaid third day of *November*, in the ſaid year of our Lord one thouſand ſeven hundred and thirty ſeven, at aforeſaid, was ready and willing to ſell and deliver to the ſaid J. ſo many hops as the ſaid P. had growing on his ſaid hop ground in that year, to wit, twenty ſeven hundred, two quarters and nineteen pounds, of as good hops, brown and bright, after the rate aforeſaid, according to the form and effect of the ſaid laſt mentioned agreement, and thereof afterwards, to wit, on the ſame day and year laſt abovementioned, at aforeſaid, gave notice to the ſaid J. and then and there requested the ſaid J. to take and accept the ſaid laſt mentioned hops of the ſaid S. after the rate aforeſaid, according to the form and effect of the ſaid agreement, nevertheless the ſaid J. not regarding his ſaid laſt mentioned promiſe and aſſumption made in form aforeſaid, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid S. in this reſpect, did not accept the ſaid hops ſo ready to be delivered to him as aforeſaid by the ſaid S. after the rate aforeſaid, but has hitherto wholly reſuſed and ſtill doth reſuſe to accept the ſame of the ſaid S.—*A common count*

count for hops bargained and sold and, conclusion to the last promise.)

Declaration
against the
warden of
the Fleet for
an escape of
a person who
had surren-
dered him-
self in dis-
charge of his
bail, and had
been turned
over by the
late warden
to the pre-
sent warden.
the now de-
fendant.

To the justices of his Majesty's court of Common Bench.

C. C. by his attorney, complains of
J. G. Esq; warden of his Majesty's prison of the
Fleet present here in court in his proper person, of a
plea of trespass on the case, FOR THAT WHEREAS
heretofore, to wit, in Michaelmas term, in the ninth
year of the reign of our sovereign lord the now King,
G. D. of Stanhope Street, Clare Market, in the coun-
ty of Middlesex, potter, and Wm. P. of Grandhurst,
in the county of Kent, mason, in their proper per-
sons came into his Majesty's court here before his
Majesty's then justices of the bench here, at West-
minster, in the said county of Middlesex, and then in
the same court here did acknowledge themselves, and
each of them by himself did acknowledge himself to
owe to the said C. C. the sum of one hundred and twenty
pounds, which said sum of one hundred and twenty
pounds they the said G. and Wm. P. for themselves
and their heirs, and each of them for himself and his
heirs, willed and granted to be made of their and each
of their goods and chattels, and to be levied to the
use of the said C. C. upon consideration that if judg-
ment in the said court here in a certain plea of tres-
pass on the case, on promise for the said C. C. against
one J. P. then late of Godhurst, in the county of
Kent aforesaid, shopkeeper, should happen to be given,
then the aforesaid J. P. should satisfy to the said C. C.
all the damages which should be adjudged to the said
C. C. against the said J. P. in the said court here, or
render his body on that occasion to the prison of the
Fleet, as by the record thereof in the said court here,
at Westminster aforesaid remaining, may more fully
appear.

AND WHEREAS the said J. P. afterwards, to wit,
on the twenty second day of April, in the year of our
Lord one thousand seven hundred and thirty six
personally

personally came before Sir *Thomas Reeve*, knight, then his said Majesty's chief justice of the said court of *Common Bench* here, at his chamber situate in *Pump Court*, in the *Inner Temple*, *London*, and then and there rendered himself in discharge of the said bail in the said plea, at the suit of the said *C. C.* and the said *J. P.* was thereupon by the said chief justice committed to his Majesty's prison of the *Fleet*, in discharge of his said bail, at the suit of the said *C. C.* in the said plea, as by the said render and commitment thereupon may more fully appear.

AND WHEREAS judgment in the said plea afterwards, to wit, in *Easter term*, in the ninth year of the reign of his present majesty King *George the second*, in the said court of *Common Bench* here, was given for the said *C. C.* against the said *J. P.* and the said *C. C.* then and there by the consideration and judgment of the said court recovered against the said *J. P.* in the said plea, thirty seven pounds, ten shillings, which in the said court was awarded to the said *C. C.* for his damages which he had sustained on occasion of the not performing of certain promises and undertakings made by the said *J. P.* to the said *C. C.* whereof the said *J. P.* is convicted, as by the record and proceedings thereof remaining in the said court of *Common Bench* here, may more fully and at large appear, which said judgment still remains in its full force, strength and effect, not reversed or any ways satisfied or discharged; and the said *C. C.* further saith, that at the time of the said render of the said *J. P.* in discharge of his said bail at the suit of the said *C. C.* as aforesaid, one *J. G. Esq;* was warden of the said prison, to wit, at *London* aforesaid, in the parish of *St. Bridget*, otherwise *St. Bride*, in the ward of *Farringdon without*, and the said *J. G.* then remained and continued warden of the said prison from thence until the fifth day of *June* then next following, and now last past, and that the said *J. G.* as warden of the said prison, always from the said time of the said commitment of the said *E. P.* during the time of the said *J. G.* so remained and continued warden of the said prison at

London

London aforesaid, in the parish and ward aforesaid, had kept and detained the said *J. P.* in his custody in the said prison, at the suit of the said *C. C.* in the said plea; and the said *C. C.* further saith, that afterwards, to wit, on the said fifth day of *June* now last past, the said *J. G.* at *London* aforesaid, in the parish and ward aforesaid, was duly removed from his said office of warden of the said prison, and the said *John Garth* was then and there duly appointed, constituted and deputed warden of the said prison of the *Fleet*, in the room, place and stead of *James Gambier*, and that the said *John G.* hath from that time hitherto continued and remained, and still doth continue and remain warden of the said prison, to wit, at *London* aforesaid, in the parish and ward aforesaid; and the said *C. C.* further saith, that the said *James G.* late *Warden* of the said prison, at his going out of the said office of warden of the said prison, to wit, on the said fifth day of *June*, in the ninth year of the reign of his present Majesty, at *London* aforesaid, in the parish and ward aforesaid, delivered and turned over the said *J. P.* at the suit of the said *C. C.* in the said plea, to the said *John G.* now warden of the said prison, whereby the said *John G.* warden of the said prison had the said *J. P.* in his custody in the said prison, at the suit of the said *C. C.* in the aforesaid plea, to wit, at *London* aforesaid, in the parish and ward aforesaid, and the said *J. P.* remained and continued then in the said prison in the custody of the said *John G.* warden of the said prison, at the suit of the said *C. C.* in the said plea, until he the said *John G.* (not minding the duty of his office of warden of the said prison, but contriving to hinder the said *C. C.* from the obtaining his aforesaid damages in form aforesaid recovered) afterwards, to wit, on the twenty fifth day of *June*, in the year of our Lord one thousand seven hundred and thirty six, at *London* aforesaid, in the parish and ward aforesaid, permitted and suffered the said *J. P.* freely to go and escape out of his custody and out of the said prison at large, wherever the said *J. P.* pleased, without the

licences

ence of the said C. C. the said C. C. being then still wholly unsatisfied his said damages in form aforesaid recovered, he the said *John G.* being then warden of the said prison, whereby and for that the said *J. P.* hath ever since lurked and hid himself in places wholly unknown to the said C. C. he the said C. C. is wholly defeated, hindered and deprived from obtaining of his aforesaid damages by him, in form aforesaid recovered, and is very likely to lose the same, to the said C. C. his damage of one hundred pounds, and therefore he prays relief, &c.

B. H. complains of *M. P.* being, &c. FOR THAT the said *M.* on the first day of *November*, in the year of our Lord one thousand seven hundred and forty seven, at *Westminster*, in the county aforesaid, got and retained a certain dog, knowing the said dog to be accustomed to bite men, which said dog afterwards the same day and year, then bit one *John G.* then and still being the servant and apprentice of the said *B. H.* and so grievously and dangerously wounded him in his leg, that his life was there- greatly despaired of for a great while, that is to say, for the space of two months then next following, whereby the said

Declaration
for keeping
a dog accus-
tomed to
bite man-
kind, which
bit plaint-
iff's appren-
tice, where-
by he lost his
service for a
long time,
and laid out
money in
curing him
of it.
Warren.

for all that time *John G.* was not only rendered and continued wholly unable and not capable to do the business of the said *B. H.* during all that time then to be done, but the said business of the said *B. H.* during all the said time then remained undone and wholly neglected, whereby the said *B. H.* wholly lost and was deprived of the profit, benefit and advantage of his said business, and his said apprentice for all that time, but also the said *B. H.* was thereby forced and obliged to lay out and expend divers great sums of money in and about the curing and healing of his said apprentice of the said *John G.* and wounding aforesaid, to wit, at *Westminster* aforesaid, whereupon the said *B.* says, that he is prejudiced and hath damage to the value of fifty pounds, and thereupon he brings his suit, &c.

Middlesex,

Declaration
for not pay-
ing part of
the money
agreed to be
paid with an
apprentice.

Middlesex, J. W. late of *Shrewsbury*, in the county of *Salop*, goldsmith, was attached to answer unto *T. D.* of a plea of trespass on the case, &c. And thereupon the said *J.* by his attorney, complains THAT WHEREAS on the twenty ninth day of *October*, in the year of our Lord one thousand seven hundred and thirty seven, at *Westminster*, in the county of *Middlesex* aforesaid, in consideration that the said *J.* at the special instance and request of the said *J. M.* would accept and take one *C. M.* son of *J. M.* then late of *Shrewsbury*, in the county of *Salop* aforesaid, brewer, deceased, to be his apprentice, to learn the art of a goldsmith, which the said *T. D.* then used and exercised, and to serve him the said *T. D.* after the manner of an apprentice the full term of five years, to be accounted from the first day of *September* then last past, and fully to be compleat and ended, he the said *J. M.* the now defendant undertook, and then and there faithfully promised the said *T. D.* to pay to the said *T. D.* the sum of twenty pounds immediately upon the said *T. D.* his taking the said *C.* to be his apprentice as aforesaid, and ten pounds more when and so soon as one half of the said term of five years of the servitude of the said *C.* should be expired, and five pounds more at the end and expiration of the said term of five years; and the said *T. D.* in fact saith, that he confiding in the aforesaid promise and undertaking of the said *J. M.* the now defendant, did take the said *C.* to be his apprentice, to learn the said art of a goldsmith, and to serve him the said *T. D.* after the manner of an apprentice from the said first day of *September* then last past, unto the full end and term of five years from thence next ensuing, and fully to be compleat and ended, whereof the said *J. M.* the now defendant, afterwards, to wit, on the said twenty ninth day of *October*, in the year aforesaid, at *Westminster* aforesaid, had notice yet the said *J. M.* the now defendant, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending, craftily and subtilly to de-

ceive and defraud the said *T. D.* in this particular, hath not yet paid the said twenty pounds or any part thereof to the said *T. D.* (although to do this he the said *J. M.* afterwards, to wit, on the said twenty ninth day of *October*, in the year of our Lord one thousand seven hundred and thirty seven aforesaid, and often afterwards, at *Westminster* aforesaid, by the said *T. D.* was requested) but he to pay the same to him hath hitherto altogether refused and still doth refuse, to the said *T. D.* his damage of thirty pounds, and therefore he brings his suit, &c.

H. H. late of, &c. and *T. T.* late of, &c. were attached to answer unto *A. H.* of a plea of trespass on the case, &c. And thereupon the said *A.* by her attorney, complains, THAT WHEREAS at the time of making of the promise and undertaking hereafter next mentioned, to wit, on the twenty seventh day of *June*, in the year of our Lord one thousand seven hundred and thirty one *Wm. P.* at aforesaid, was indebted unto the said *A.* in ten pounds due to the said *A.* from the said *Wm.* upon a certain note in writing called a promissory note, before then made by the said *Wm.* to the said *A.* for the payment of the said sum of ten pounds at a certain time in the said note mentioned, to the said *A.* or her order.

Declaration
in considera-
tion plaintiff
had deliver-
ed defend-
ants a pro-
missory note
from a third
person, de-
fendants
promised to
pay plaintiff
so much or
redeliver the
said note in
such a time

AND WHEREAS the said *T.* and *H.* afterwards, to wit, on the said twenty seventh day of *June*, in the year aforesaid, at aforesaid, in consideration that the said *A.* at the special instance and request of the said *H.* and *T.* would deliver to them the said *H.* and *T.* the said note, undertook, and then and there faithfully promised the said *A.* to pay her the sum of eighty pounds on or before the twenty fourth day of *December* then next following, or otherwise to redeliver the said note to the said *A.* and the said *A.* in fact saith, that she confiding in the said promise and undertaking of them the said *H.* and *T.* she the said *A.* at the said instance of them the said *H.* and *T.* afterwards, to wit, on the said twenty seventh day of *June*, in the year aforesaid, at aforesaid, delivered

DECLARATIONS, PLEADINGS, &c.

delivered to the said *H.* and *T.* the said note, yet the said *H.* and *T.* not regarding their said promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *A.* in this particular, have not, nor hath either of them yet paid the said eight pounds or any part thereof to the said *A.* nor have they or either of them hitherto delivered the said note to the said *A.* (although to do that the said *H.* and *T.* afterwards, to wit, on the twenty fourth day of *December*, in the year aforesaid, and often afterwards at aforesaid, by the said *A.* were requested) but the said *H.* and *T.* to do the same have hitherto wholly refused and still do refuse.

AND WHEREAS before the making of the promise and undertaking hereafter next mentioned, to wit, on the said twenty seventh day of *June*, in the year of our Lord one thousand seven hundred and thirty aforesaid, at aforesaid, the said *Wm. P.* was indebted unto the said *A.* in other ten pounds due from the said *Wm.* to the said *A.* upon a certain other note in writing called a promissory note, before then made by the said *Wm.* to the said *A.* for the payment of the said last mentioned sum of ten pounds at a certain time in the said last mentioned note specified, to the said *A.* or her order.

AND WHEREAS afterwards, to wit, on the said twenty seventh day of *June*, in the year aforesaid, at aforesaid, in consideration that the said *A.* at the special instance and request of them the said *H.* and *T.* had delivered to them the said *H.* and *T.* the said last mentioned note, they the said *H.* and *T.* undertook, and then and there faithfully promised the said *A.* to pay her other eight pounds on or before the twenty fifth day of *September* then next following, or to redeliver to the said *A.* the said last mentioned note, yet the said *H.* and *T.* not regarding their said last mentioned promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud

defraud the said *A.* in this particular, have not nor hath either of them yet paid the said last mentioned sum of eight pounds or any part thereof to the said *A.* nor have they or either of them re-delivered the said last mentioned note to the said *A.* (although to do this they the said *H.* and *T.* afterwards, to wit, on the said twenty fifth day of *December*, in the year aforesaid, at aforesaid, by the said *A.* were requested) but they the said *H.* and *T.* to pay the same have hitherto wholly refused and still do refuse, to the said *A.* her damage of twenty pounds, and therefore she brings her suit, &c.

M. W. and *T. D.* complain of *F. D.* and *M.* his Declaration wife, being, &c. FOR THAT WHEREAS one *B.* in considera-
C. and *N. C.* on the twenty second day of *September*, tion plaintiff
 in the year of our Lord one thousand six hundred and would not
 fifty five, were jointly and separately bound to the said put a bond in
M. W. and *T. D.* by their certain writing obligatory in suit against
 the sum of four hundred pounds, with a condition for the defendant
 payment of two hundred and six pounds on the twen- whilst sole as
 ty fourth of *July* then next following, which said sum administra-
 of two hundred and six pounds were not paid to the trix she pro-
 said *M. W.* and *T. D.* or either of them on the said mised plain-
 twenty fourth day of *July*, according to the condition tiff to pay
 of the said writing obligatory, whereby the said four both princi-
 hundred pounds upon the said writing obligatory became pal and in-
 forfeited to the said *M. W.* and *T. D.* terest due on
 such bond in
 a short time,

AND WHEREAS the said *N.* afterwards, to wit, on the first day of *June*, in the year of our Lord one thousand six hundred and fifty eight, at *L.* aforesaid, to wit, in the parish of *B.* in the ow ward of *Cheap*, died intestate, (the said four hundred pounds being unpaid to the said *M. W.* and *T. D.* or either of them) after whose death administration of all the goods and chattels which were belonging unto the said *N.* at the time of his death, was lawfully committed to the said *M.* whilst she was sole, by virtue whereof she the said *M.* became possessed of the said goods and chattels

which were belonging to the said *N.* at the time of his death, and the said goods and chattels became liable to pay the just debts of the said *N.*

AND WHEREAS the said *M. W.* and *T. D.* for the sooner obtaining of the debt aforesaid, did intend to put the said writing obligatory in suit against the said *M.* as administratrix of the goods and chattels of the said *N.* for the recovery of the aforesaid four hundred pounds, and of such their intention they the said *M. W.* and *T. D.* afterwards, to wit, on the tenth day of *November*, in the year of our Lord one thousand six hundred and fifty eight, at *L.* aforesaid, in the parish and ward aforesaid, gave notice to the said *M.* whilst she was sole, whereupon the said *M.* whilst she was sole, to wit, the day and year last abovesaid, at *L.* aforesaid, in the parish and ward aforesaid, in consideration of the premises, and also in consideration that the said *M. W.* and *T. D.* at the special instance and request of the said *M.* would forbear to put the said writing obligatory in suit against the said *M.* undertook, and then and there faithfully promised the said *M. W.* and *T. D.* that she the said *M.* would then immediately pay the interest then due upon the said writing obligatory to the said *M. W.* and *T. D.* and would also pay them the principal money due upon the said writing obligatory within a reasonable time afterwards; and the said *M. W.* and *T. D.* in fact say, that they confiding in the said promise and undertaking of the said *M.* whilst she was sole in form aforesaid made, have always from the time of the making of the said promise and undertaking afterwards hitherto abstained and forbore, and still do abstain and forbear to put the said writing obligatory in suit against the said *M.* and the said *M. W.* and *T. D.* further in fact say, that the interest aforesaid then due upon the said writing obligatory at the time of the making of the said promise and undertaking amounted to thirty four pounds, yet the said *M.* whilst she was sole, and the said *F.* and *M.* after their intermarriage, not regarding the said promise

promise and undertaking of the said *M.* whilst she was sole in form aforesaid made, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *M. W.* and *T. D.* in this particular, have not nor hath either of them yet paid the said principal money and interest due for the same upon the said writing obligatory, amounting in the whole to two hundred and thirty four pounds (although to do this the said *M.* often afterwards whilst she was sole, and the said *F.* and *M.* after their intermarriage, to wit, on the seventh day of *February*, in the year of our Lord one thousand six hundred and fifty nine, at *L.* aforesaid, in the parish and ward aforesaid, by the said *M. W.* and *T. D.* were requested) but they or either of them to pay the same to them have hitherto wholly refused and still do refuse, to the said *M. W.* and *T. D.* their damage of four hundred pounds, and therefore they bring their suit, &c.

London. *Henry Masterman*, gent. by his attorney, complains of *G. F.* gent. one, &c. of a plea of trespass on the case, &c. FOR THAT WHEREAS the said *G.* before the making of the promise hereafter mentioned, to wit, on the day of in the year of our Lord at *London* aforesaid, in the parish of *St. M.* &c. was indebted unto the said *Henry* (the said *Hen.* then being one of the clerks of *Simon Harcourt*, Esq; being the coroner and attorney of the lord the king) in thirty four pounds, as well for the fees of the said *Henry* for the work and labour, art, care and industry of thd said *Henry* in and about the prosecuting and defending of divers causes, suits, indictments, and other businesses in the office of the crown of the said lord the King and elsewhere by the said *Henry* before that time prosecuted and defended, at the special instance and request of the said *G.* and upon his retainer as for divers sums of money by the said *Henry* before that time laid out and expended and paid at the special instance and request

Declaration in consideration that plaintiff who was clerk in the crown office would not try a cause then at issue and record made up notice of trial given and habeas corpus made out for business done by plaintiff for defendant in the crown office, defendant promised to pay debt and costs, but only paid debt, and

his action
was brought
for the costs.
From a late
precedent of
Warren.

of the said *G.* in that particular, and being so indebted, he the said *G.* in consideration thereof afterwards, to wit, the same day and year then undertook, and faithfully promised the said *Henry*, to pay him the said sum of money, but the said sum of money not being paid to the said *Henry*, nor the said promise being in any wise performed, he the said *Henry*, for the obtaining and recovering of his damages on occasion of the non-performance of that promise sustained afterwards in *Michaelmas* term, in the tenth year aforesaid, exhibited to the justices of our said lord the King here his certain bill against the said *G.* (the said *G.* then and still being one of the attornies of the court of the said lord the King of the bench here) present here in court in his own person, by which said bill the said *Henry* complained of the said *G.* of a plea

THAT WHEREAS the said *G.* on the first day of *October*, (*Ec. reciting the declaration*) and thereupon the said *G.* pleaded the issue to be tried by the country and the record of *nisi prius*, and his said Majesty's writ of *habeas corpus* was made and issued out in the said cause for the trying of that issue, at the sessions to be held before Sir *Peter King*, knight, the chief justice of the court of the lord the King of the bench here, on at the *Guildhall* of *London*.

AND WHEREAS the said *G.* afterwards, to wit, on the day of in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *Henry*, at the special instance and request of the said *G.* would not try the said issues so between the said parties as aforesaid above joined at the said session to be held at the *Guildhall* of *London* aforesaid, but would cause the said trial thereof to be deferred and would desist from all other further process and prosecution in the same plea, undertook, and then and there faithfully promised the said *Henry* to pay him as well the said thirty four pounds for his damages which he had sustained on occasion of the non performance of that promise, as the costs and charges

charges by him the said *Henry* laid out about his suit in that particular; and the said *Henry* in fact says, that he confiding in the said promise and undertaking of the said *G.* did not try the said issue between him the said *Henry* and the said *G.* so as aforesaid joined, but caused the trial thereof to be deferred, and at the said instance and request of the said *G.* hath always from thence afterwards hitherto desisted and still doth desist from all further process and prosecution of the same plea, and all process thereupon against the said *G.* hath ceased; and the said *Henry* further in fact says, that the costs and charges by him laid out about his suit in that particular in the whole amounted to to wit, at *London* aforesaid, in the parish and ward aforesaid, whereof the said *G.* afterwards, to wit, on the day of in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, paid to the said *Henry* the said sum of thirty four pounds for the damages aforesaid, yet the said *G.* not regarding his said promise and undertaking as to the payment of the said for the costs and charges aforesaid, but contriving, &c. &c. *C. G.*

J. L. and *H. P.* were attached by his majesty's writ of privilege issuing out of this court here, to answer unto *T. B.* gent. one of the attorneys, &c. of a plea of trespass on the case, &c. And thereupon the said *T.* in his proper person complains THAT WHEREAS one *T. R.* long before the making of the promise and undertaking of the said *J.* and *H.* hereafter mentioned, to wit, on the first day of *January*, in the year of our Lord one thousand seven hundred and thirty three, at in the county aforesaid, was indebted to the said *T. B.* in four pounds, for divers goods, wares and merchandizes before that time sold and delivered by the said *T. B.* to the said *T. R.* and at his special instance and request, and being so indebted, he the said *T. R.* in consideration thereof afterwards, the same day and year aforesaid, at aforesaid, undertook, and then and there faithfully promised the said *T. B.*

In consideration plain-tiff or attorney *C. B.* would not try a cause at his suit against one *Rudd* in the *Exchequer*, defendant, promised to pay him debt and costs. *Warren.*

to

to pay him the said sum of money, but the said sum of money or any part thereof not being paid to the said *T. B.* nor the said promise and undertaking of the said *T. R.* being in any wise performed, he the said *T. B.* for the recovering of his damages by him sustained on occasion of the non performance of the said promise and undertaking of the said *T. R.* afterwards, to wit, in *Easter* term, in the seventh year of the reign of our lord the now king, impleaded the said *T. R.* in his majesty's court of *Exchequer*, at *Westminster*, before the then barons of the *Exchequer* of our said lord the King, at *Westminster*, (the said court then and still being at *Westminster*, in the county of *Middlesex*) in a certain plea of trespass on the case on promise, to the damage of the said *T. B.* of twenty pounds, of and for the non performance of the before mentioned promise of the said *T. R.* of which said impleading at law, they the said *J.* and *H.* afterwards, to wit, on the day of in the year of our Lord one thousand seven hundred and thirty four, at aforesaid, had notice, and thereupon afterwards, to wit, the same day and year last aforesaid, at aforesaid, in consideration that the said *T. B.* at the special instance and request of the said *J.* and *H.* would not any further prosecute his said suit against the said *T. R.* but at the said instance and request of the said *J. H.* would from thenceforth cease and abstain from any further process and prosecution thereon, they the said *J.* and *H.* undertook, and then and there faithfully promised the said *T. B.* to pay him not only the said sum of four pounds so due to him the said *T. B.* from the said *T. R.* but also all such costs and charges as the said *T. B.* had expended and been put unto in the said suit to that time; and the said *T. B.* in fact saith, that he the said *T. B.* giving confidence to the aforesaid promise and undertaking of the aforesaid *J.* and *H.* he the said *T. B.* at any time after the aforesaid promise and undertaking of the said *J.* and *H.* hitherto hath not any further prosecuted the said suit against the said *T. R.* but at the said request of the said *J.* and *H.* hath from thence
hitherto

hitherto ceased and abstained and still doth cease and abstain from any further process or prosecution thereon, and that the costs and charges that the said *T. B.* had expended and been put unto in the said suit to the said time of making the said promise and undertaking of the said *J.* and *H.* at the time of making that promise and undertaking, amounted unto the sum of thirty pounds, to wit, at aforesaid, of all which said premises they the said *J.* and *H.* afterwards, to wit, on the same day and year last aforesaid, at aforesaid, had notice.—*A common conclusion ad damnum fifty pounds.*

The Case.

T. Rudd being indebted to plaintiff in four pounds for goods sold, impleaded him as in declaration, to which *Rudd* pleaded the general issue, and the record was made up and sent down to the assizes, when defendant made the promise, upon which plaintiff withdrew the record after it was entered with the marshal, he delivered to one of the defendants a bill of costs and of the debt before he brought his action.

Wm. W. a debtor, &c. &c. complains by bill against *F. B.* present here in court the same day, of a plea of trespass on the case; FOR THAT WHEREAS the said *F.* at the time of the suing out of the writ hereafter mentioned, to wit, on the day of in the year of our Lord at *Westminster*, in the county aforesaid, was indebted unto the said *Wm.* in one hundred pounds, for beer and ale by the said *Wm.* before that time sold and delivered to the said *F.* and being so indebted, he the said *F.* in consideration thereof afterwards, to wit, the same day and year then undertook, and then and there faithfully promised the said *Wm.* to pay him the said sum of money, but the said sum of money not being paid to the said *Wm.* nor the said promise being in any wise performed, he the said *Wm.* for the obtaining and recovering of his damages sustained on occasion of the not performing of the

Plaintiff arrested defendant for a debt of one hundred pounds, and in consideration he would discontinue that action, defendant promised to pay debt and costs to that day and paid debt but no costs. From late precedents of *Serj. Bootle.*

Upon an arrest of exchequer process.

the said promise afterwards, to wit, on the said day of in the year aforesaid, sued out of his Majesty's court of *Exchequer* (the said court then and still being at *Westminster* aforesaid) his said Majesty's certain writ against the said *F.* directed to the sheriff of the county of *Middlesex*, by which said writ, &c. (*here recite the writ carefully*) by virtue of which said writ, he the said *F.* afterwards and before the return of the same, to wit, on the day of in the year aforesaid, at *Westminster* aforesaid, in the county aforesaid, in due form of law was taken and arrested, and the said *F.* being so taken and arrested afterwards, to wit, on the twenty sixth day of *January*, in the year aforesaid, at *Westminster* aforesaid, in the county aforesaid, in consideration that the said *Wm.* at the special instance and request of him the said *F.* would cease and desist from any further prosecution of the said suit against the said *F.* undertook, and then and there faithfully promised the said *Wm.* to pay him not only the said one hundred pounds, but also all the costs and charges which he the said *Wm.* had to that time laid out and expended in and about the prosecution of that suit against him the said *F.* and the said *Wm.* in fact says, that he the said *Wm.* then, to wit, on the said twenty sixth day of *January*, in the year aforesaid, had laid out and expended in and about the prosecution of the said suit against the said *F.* whereof the said *F.* afterwards, to wit, the same day and year there had notice, and although he the said *Wm.* hath from the time of the making of the said promise of the said *F.* wholly ceased and desisted from any further prosecution of the said suit against him the said *F.* and although the said *F.* hath paid to the said *Wm.* the said one hundred pounds, yet the said *F.* not regarding his said promise and undertaking as to the said by him the said *Wm.* so as aforesaid laid out and expended in and about the prosecution of the said suit against the said *F.* but contriving, &c. as to the said laid out, &c.

T. T.

T. T. against *R. S.* FOR THAT WHEREAS at the time of the making of the promise hereafter next specified, to wit, on the day of one *T. T.* at in the year of our Lord was indebted unto the said *T. T.* the now plaintiff in sixty shillings for meat, drink, washing and lodging, by the said *T. T.* the now plaintiff before that time found and provided for the said *T. T.* secondly abovenamed, at his special instance and request.

AND WHEREAS afterwards, to wit, on the same day and year abovesaid, the said *T. T.* the now plaintiff, did intend not to find meat, drink, washing and lodging for the said *T. T.* secondly above named any longer unless the said *T. T.* the now plaintiff should have the said sixty shillings so due to him from the said *T. T.* secondly abovenamed paid to him, to wit, at, aforesaid, whereof the said *R.* afterwards, to wit, the same day and year then had notice, and thereupon in consideration that the said *T. T.* the now plaintiff, at the special instance and request of him the said *R.* would continue to board the said *T. T.* secondly above named, he the said *R.* the same day and year, at aforesaid, undertook, and then and there faithfully promised the said *T. T.* the now plaintiff, to pay him the said sixty shillings and any other sum of money to become due and payable to the said *T. T.* the now plaintiff, for meat, drink, washing and lodging to be so found by him for the said *T. T.* secondly abovenamed, at the special instance and request of the said *R.* not exceeding ten pounds; and the said *T. T.* the now plaintiff, in fact says, that he confiding in the said promise and undertaking of the said *R.* he the said *T. T.* the now plaintiff, at the said instance and request of the said *R.* continued to board the said *T. T.* secondly abovenamed, and at the said instance and request of the said *R.* found for the said *T. T.* secondly abovenamed, meat, drink, washing and lodging for a long time, to wit, for the space of then next following, and that therefore other sixty shillings became due and payable to the said *T. T.* the now plaintiff, whereof the said

In consideration plaintiff would continue to board a third person who then owed plaintiff sixty shillings, defendant promised to pay the said sixty shillings and any other sum that should become due for board not exceeding ten pounds.

said R. afterwards, to wit, on the day of
in the year aforesaid, then had notice.

*Another count for meat, &c. found for the said T. T
secondly abovenamed, at the instance of defendant, and com-
mon conclusion.*

In consider-
tion plain-
tiff would
demise a
messuage to
a third per-
son defen-
dant pro-
mised to see
the rent
paid, and
though the
third person
paid part,
defendant
refused to
pay the re-
mainder.
From a La-
tin prece-
dent of
Mr. Boile.

J. W. complains of P. H. being, &c. FOR THAT
WHEREAS on the twenty first day of June, in the
year of our Lord one thousand seven hundred and
twenty two, at in the county aforesaid, in
consideration that the said J. W. at the special instance
and request of the said P. H. had demised to one
M. H. one messuage or tenement of the said J. W.
with the appurtenances, situate and being in the parish
of in a certain place then called the Old
Bailey, to have and to hold unto the said M. from
the twenty fourth day of June then next, to wit, in the
same year, for one whole year then next following, and
so from year to year so long as it should please the
said J. W. and M. and a quarter of one year's warn-
ing to be given by either of them to the other accord-
ing to custom, with a schedule of such things as should
be left to be given by the said M. at the leaving the
said house, yielding and paying therefore yearly and
every year, wherein the said M. should have and enjoy
the said messuage or tenement with the appurtenances
by virtue of that demise, the yearly rent or sum of
twenty pounds, he the said P. H. undertook, and
then and there faithfully promised the said J. W.
that he the said P. H. would see the agreement
performed on the part of the said M. and the said
rent or sum so as aforesaid reserved, paid to the said
J. W. and the said J. W. in fact says, that the said
M. by virtue of the said demise, entered into the
said messuage or tenement with the appurtenances
and was thereof possessed until and upon the twenty
fourth day of June, in the year of our Lord
and the said J. W. further in fact says, that although
the said N. paid to the said J. W. five pounds in part
of payment of twenty pounds of the rent for that year

to wit, at *Westminster* aforesaid, in the said county of *Middlesex*, and although the said *M.* hath not paid or caused to be paid fifteen pounds residue of the said twenty pounds of the rent aforesaid for that year ended on the said twenty fourth day of *June*, in the said year of our Lord but to do this hath wholly

neglected and refused, whereof the said *P. H.* after the end of that year, to wit, on the day of

at *Westminster* aforesaid, in the county aforesaid, had notice, yet the said *P. H.* not regarding his said promise and undertaking as to the payment of the said rent or his seeing the same to be said, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *J. W.* in this particular, hath not yet paid or regarded, or seen to be paid to the said *J. W.* the said fifteen pounds or any part thereof (although to do this the said *P. H.* afterwards, to wit, on the said first day of *August*, in the year aforesaid, and often afterwards at aforesaid, by the said *J. W.* was requested) but he to pay the same or cause the same to be paid to him, hitherto wholly hath denied and still doth deny, and the said fifteen pounds are still unpaid to the said *J. W.*

AND WHEREAS (*the precedent goes no further*) *Query whether the other count is not for a whole year's rent due, and the five pounds not paid.*

T. W. complains of *F. K.* being, &c. FOR THAT WHEREAS on the twenty fifth day of *July*, in the year of our Lord one thousand seven hundred and twenty three; at in the county aforesaid, a certain discourse was moved and had between them the said *T.* and *E.* of and concerning a lease of a certain messuage or tenement of the said *E.* with the appurtenances, situate and being in the parish aforesaid, to be made to the said *T.* by the said *E.* and thereupon the said *E.* afterwards, to wit, the same day and year, at aforesaid, in the county aforesaid, in consideration that the said *T.* at the special instance and request of the said *E.* would accept of a lease of the messuage aforesaid for a term of three years, to commence from

In consideration plaintiff would take a lease of a house of defendant, defendant promised to put the house in repair, but did not.

From a precedent of *Mr. Bootle.*

DECLARATIONS, PLEADINGS, &c.

from the feast of St. *Michael* the archangel then next following, under the yearly rent of seventeen pounds of lawful money of *Great Britain*, to be paid to the said *E.* by the said *T.* yearly during that term, by equal quarterly payments, undertook, and then and there faithfully promised the said *T.* that he the said *E.* at his own proper costs and charges would put or cause to be put the said messuage with the appurtenances, then being in decay and out of repair, into good and sufficient tenantable repair before the said feast of St. *Michael* the archangel then next following; and the said *T.* in fact says, that although he the said *T.* afterwards, to wit, on the said twenty fifth day of *July*, in the year aforesaid, at the parish aforesaid, in the county aforesaid, accepted and received a lease of the same messuage with the appurtenances for the said term of three years commencing from the feast of St. *Michael* the archangel then next following, under the yearly rent of seventeen pounds of lawful money of *Great Britain*, to be paid to the said *E.* by the said *T.* yearly, during the term aforesaid, by equal quarterly payments, and held and occupied the said messuage with the appurtenances for the space of from the said feast day of St. *Michael* the archangel then next following by virtue of the said demise, yet the said *E.* not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *T.* in this particular, the said messuage at the time of the making of the promise aforesaid being in great decay, to wit, in the roof of the said messuage for want of tiling, whereby the rafters, beams and timber of that messuage were rotten and ruinous in the greatest decay, and the underpinnings and side wavers, and the plastering and the doors, and the floors of the said messuage were in very great decay for want of reparation and amendment, and also the windows of the said house for want of glazing, with the appurtenances, and the said messuage being so in decay, hath not put or caused to be put into good and sufficient tenantable repair before the said feast
of

of St. *Michael* the archangel then next following, nor would nor hath regarded to repair the same, but to do this hath wholly neglected and refused (although to do this the said *E.* often within the time and afterwards, to wit, on the thirtieth day of *November*, in the year aforesaid, at aforesaid, in the county aforesaid, by him the said *T.* was requested) but he to repair the same hath hitherto wholly refused, and that the said *T.* for that cause could not only not inhabit or dwell in the said messuage with his family, and was forced and compelled to leave the said messuage after his said entrance and occupation thereof for the time aforesaid, to wit, on the day of in the year aforesaid, but also divers goods and chattels and household goods, to wit, of the said *T.* being put and placed in the said messuage became rotten and corrupted, and were greatly spoiled by tempestuous rains falling down and dropping upon the same for all that time in the messuage aforesaid, as aforesaid being, whereupon the said *T.* says, that he is prejudiced and hath damage to the value of pounds, and therefore he brings his suit, &c.

Martha Evans, a Debtrix, &c. and complains, &c. Defendant was agent to
against *Wm. Bird*, present here, &c. FOR THAT a company,
WHEREAS the company of mineral manufacturers of and gave a
Heath, on the eleventh day of *October*, in the year of note to *Hat-*
our Lord one thousand seven hundred and twenty two, sell to entitle
at *W.* in the county aforesaid, were indebted to one him to thirty
Thomas Hatsell in thirty four shillings, for the work and four shil-
labour of the said *T. H.* before that time done and per- lings from
formed in and about the business of the said company, the said com-
and at their special instance and request, and on that pany, who
occasion he the said *Wm.* as agent for the said com- gavethenote
pany, afterwards, to wit, the same day and year above- to the plain-
said, at *W.* aforesaid, made his certain note in writing, tiff for a debt
subscribed with his own proper hand, bearing date he owed
the same day and year, and the said note containing her; and
as follows, to wit, That that note entitled the said *T.* defendant
or order to one pound fourteen shillings for the said promised
company, upon the fifth day of *November* then next plaintiff if
following, she would
keep thenote
till such a
time, he
would ex-
change it
for money.

From a Latin
precedent of
Mr. Baile.

following, for work done for the said company then and there delivered to the said *T*.

AND WHEREAS afterwards, to wit, on the twenty third day of *April*, in the year of our Lord one thousand seven hundred and twenty four, at *W*. aforesaid, in consideration that the said *T*. had assigned and delivered the said note to the said *M*. for the like sum of money due and payable from the said *T*. to the said *M*. to obtain and receive the said sum of money specified in the said note of the said company to her own proper use, in satisfaction and payment of the said sum of money so due to the said *M*. as aforesaid, whereof the said *Wm*. afterwards, to wit, the same day and year last aforesaid then had notice, and thereupon the said *Wm*. afterwards, to wit, the same day and year last afovementioned, at *W*. aforesaid, in consideration that the said *M*. at the special instance and request of him the said *Wm*. would keep the said note in her custody until the twenty ninth of *September* then next following, undertook and then and there faithfully promised the said *M*. to pay her the said thirty four shillings in exchange for the said note; and the said *M*. in fact says, that she confiding in the said promise and undertaking, the said *M*. at the said instance of the said *Wm*. kept the said note in her custody until the twenty ninth day of *September* then next following, to wit, at *W*. aforesaid, whereof the said *Wm*. afterwards, to wit, the same day and year last aforesaid, at *W*. aforesaid, had notice.

AND WHEREAS afterwards, to wit, on the twenty third day of *April*, in the year of our Lord one thousand seven hundred and twenty four aforesaid, at *W*. aforesaid, the said *T. H.* had assigned to the said *M*. a certain other note of the said *Wm*. in which said last mentioned note it was contained, That that last mentioned note entitled the said *Thomas*, or order, to other thirty four shillings for the said company of mineral manufacturers of *Heath*, on the fifth day of *November* then next following, for work done for the said company, and in consideration thereof he the said *Wm*. afterwards, to wit, the same day and year last aforesaid, at *W*. aforesaid, undertook and then and there

here faithfully promised the said *M.* to pay the said *M.* thirty four shillings in exchange for the said last mentioned note in case she should have the said note in her custody on the said twenty ninth day of *September* then next; and the said *M.* in fact says, that she on the said twenty ninth day of *September* then next following, to wit, in the year last aforesaid, had the said last mentioned note in her custody, to wit, at *W.* aforesaid, whereof the said *Wm.* afterwards, to wit, the same day and year last aforesaid, at *W.* aforesaid, had notice, yet the said *Wm.* not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *M.* in this particular, hath not paid the said several sums of thirty four shillings in exchange for the said several notes in the said several promises respectively mentioned, or either of them, to the said *M.* (although to do this the said *Wm.* afterwards, to wit, on the said twenty ninth day of *September* in the year last aforesaid and often afterwards at *W.* aforesaid by the said *M.* was requested) but he to pay the same to her hath hitherto wholly refused, and still refuses to the said *M.* her damage of ten pounds, whereby, &c.

Palace of *Rocheſter.* *John Tygh* complains of *Henry Viting* of a plea of trespass upon the case, &c. and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; and thereupon the said *John* by

his attorney, complains THAT WHEREAS he the said *John*, on the sixth day of *November* in the year of our Lord one thousand seven hundred and twenty two,

within the jurisdiction of this court, had bought of the said *Henry* ten sacks of wheat flour, computing five bushels to the sack, in the whole amounting to fifty bushels, at the rate and price of twenty eight shillings a sack for every sack to be therefore paid by the said *John* to the said *Henry* and then and there undertook and faithfully promised the said *Henry* to pay him therefore the rate or price aforesaid; and in consideration thereof, he the said *Henry* afterwards, to wit, on the same day and year,

Plaintiff
bought of
defendant
several quantities of
flour, and
paid for it;
in consideration whereof
defendant
promised to
deliver it to
plaintiff, but
only delivered part.

From a Latin precedent of Mr. *Bottle.*

at

at aforesaid, within the jurisdiction of the said court, undertook, and then and there faithfully promised the said *John* to deliver to him the said *John* the same quantity of wheat flour; and although the said *Henry* afterwards, to wit, on the day of in the year aforesaid, at aforesaid, within the jurisdiction aforesaid, in prosecution of the promise of him the said *Henry*, delivered to the said *John* forty five bushels and seven gallons of wheat flour in part of the said fifty bushels of wheat flour, and although the said *John* had paid to the said *Henry* the rate or price aforesaid for the whole fifty bushels of wheat flour to be delivered by him the said *Henry* so as aforesaid, yet the said *Henry* not regarding his said promise and undertaking as to the delivery of the residue of the said fifty bushels of wheat flour, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John* in this particular of the residue of the said fifty bushels of wheat flour, to wit, four bushels and one gallon thereof hath not delivered, nor would, nor hath regarded to deliver to the said *John* (although to do this the said *Henry* afterwards, to wit, the same day and year last aforesaid, and often afterwards, at aforesaid, within the jurisdiction of the said court, by the said *John* was requested) but he the said *Henry* to deliver the same to him, or to perform his said promise in that particular hath wholly refused, and still refuses.

AND WHEREAS the said *John* afterwards, to wit, on the day of *February*, in the year of our Lord one thousand seven hundred and twenty three, at aforesaid, within the jurisdiction of the said court, fifteen other sacks of other wheat flour, computing five bushels to every sack, in the whole amounting to seventy five bushels, at the rate and price of a sack for every sack thereof, to be paid therefore by the said *John* to the said *Henry*, and then and there undertook and faithfully promised the said *Henry* to pay him therefore the said last mentioned rate or price; and in consideration thereof he the said *Henry* afterwards, to wit, the same day and year last above said, at aforesaid, within the jurisdiction of the court aforesaid, undertook and then and there faithfully promised the said *John* to deliver

to the said *John* the same last mentioned quantity of wheat flour; and although the said *Henry* afterwards, to wit, on the day of in the year last abovesaid, at abovesaid, within the jurisdiction of the said court, in prosecution of the said last mentioned promise of the said *Henry*, delivered to the said *John* seventy bushels and seven gallons of wheat flour in part of the said seventy five bushels of wheat flour last mentioned, and although he the said *John* had paid to the said *Henry* the said last mentioned rate or price for all the said seventy five bushels of wheat flour last mentioned by him the said *Henry* so as abovesaid to be delivered, yet the said *Henry* not regarding his said last mentioned promise and undertaking as to the delivery of the residue of the said seventy five bushels of wheat flour last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John* in this particular, hath not yet delivered, nor would, nor hath regarded to deliver the residue of the said seventy five bushels of wheat flour, to wit, other four bushels and one gallon thereof to the said *John* (although to do this the said *Henry* afterwards, to wit, on the said day of in the year last abovesaid, and often afterwards, at abovesaid, within the jurisdiction of the said court, by the said *John* was requested) but he the said *Henry* to deliver the same, or to perform his said last mentioned promise in that particular, hath wholly refused and still refuses.

A count for money had and received, and a common conclusion to the last count.

Wm. Betteridge against *Wm. Miles* and *Robert Kinglate*. FOR THAT WHEREAS at the time of the making of the promise hereafter specified, to wit, on the fifth day of *January*, in the year of our Lord one thousand seven hundred and twenty four, at in the county abovesaid, a certain discourse was moved and had between the said *Wm. M.* and *Robert* and the said *Wm. B.* of and concerning a certain marriage between him the said *Wm. B.* and *Dorothy Byst* (which said *Dorothy* then and there had a bas-

K

tard)

In consideration plaintiff would marry one *Dorothy Byst*, who had a bastard, defendant promised to pay him seven pounds, and only paid him forty shillings.

From a Latin precedent of Mr. Baskle.

tard) then and there proposed by the said *Wm. M.* and *Robert* to the said *Wm. B.* to be had and solemnized, and upon that discourse the said *Wm. M.* and *Robert* then and there, in consideration that the said *Wm. B.* at the special instance and request of the said *Wm. M.* and *Robert* would take to his wife the said *Dorothy*, undertook, and the same day and year there, to wit, at
aforesaid, faithfully promised the said *Wm. B.* that they the said *Wm. B.* and *Robert* would pay seven pounds of lawful money of *Great Britain* to the said *Wm. B.* and the said *Wm. B.* in fact says, that he, considering in the said promise and undertaking at the said instance of them the said *Wm. M.* and *Robert*, afterwards, to wit, the same day and year, at
aforesaid, took the said *Dorothy* to his wife, and then and there espoused her according to the ecclesiastical laws of this kingdom of *England*, whereof the said *Wm. M.* and *Robert*, afterwards, to wit, on the same day and year, there had notice; and although the said *Wm. M.* and *Robert*, afterwards, to wit, on the same day and year, at
aforesaid, paid to the said *Wm. B.* forty shillings in part of the payment of the said seven pounds by them to the said *Wm. B.* according to the promise aforesaid to be made, yet the said *Wm. M.* and *Robert*, not regarding their said promise and undertaking as to five pounds residue of the said seven pounds, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Wm. B.* in this particular, have not, nor hath either of them yet paid the said five pounds residue of the said seven pounds, or any part thereof, to the said *Wm. B.* (although to do this the said *Wm. M.* and *Robert*, afterwards, to wit, on the first day of *March*, in the year aforesaid, and often afterwards, at
aforesaid, by the said *Wm. B.* were requested, but they to pay the same to him have hitherto wholly refused and still do refuse, to the said *Wm. B.* his damage of twenty pounds, and therefore he brings his suit, &c.

In consideration plaintiff would bring a cause

John Swinnerton, a debtor, &c. against *Thomas Blacketh*, present, &c. FOR THAT WHEREAS at the time of the making of the promise and undertaking hereafter

next

next specified, to wit, on the sixteenth day of *June*, in the year of our Lord one thousand seven hundred and twenty two, at *W.* in the county of *Middlesex* afore said, a certain cause or suit between one *Blacket*, *Burton*, plaintiff, and *Samuel Burton* father of the said *Blacket*, joined at issue, was had and depending in the high court of chancery, and ready to be heard before the Lord Chancellor.

to hearing
in chancery,
defendant
promised to
pay him all
charges be-
fore such a
day.

From a La-
tin prece-
dent of Mr.
Boyle.

AND WHEREAS the said *T.* in consideration that the said *J.* at the special instance and request of the said *T.* would prosecute and bring, or cause to be brought, the said cause or suit to be prosecuted and brought to a hearing before the Lord High Chancellor, undertook, and then and there faithfully promised the said *John* to pay him all his fees and disbursements which he the said *John* should deserve or lay out, or cause to be laid out before the twenty third of *October* then next following; and the said *John* in fact says, that he confiding in the said promise and undertaking of the said *Thomas*, he the said *John* afterwards and before the twenty third day of *October* then next following, to wit, on the day of in the year afore said, at afore said, had prosecuted and brought that cause or suit before *Thomas Earl of Macclesfield*, Lord Chancellor of *Great Britain*, to be heard, and that he the said *John* on that occasion, before the said twenty third day of *October* then next following, and after the making of the said promise, had laid out and expended divers sums of money, amounting in the whole to and that he the said *John*, for his fees in that particular, reasonably deserved to have of the said *Thomas* to wit, at *W.* afore said, in the county afore said, whereof the said *Thomas* afterwards, to wit, the same day and year last afore said, there had notice.

AND WHEREAS the said *Thomas*, on the nineteenth day of *June*, in the year afore said, at *W.* afore said, made his certain note in writing called a promissory note, subscribed with his own proper hand, bearing date the same day and year, and then and there delivered the said note to the said *John*, &c.

DECLARATIONS, PLEADINGS, &c.

A common count on a note of hand for four pounds six shillings and six pence for value received the nineteenth of June, one thousand seven hundred and twenty two.

Another count for work and labour, care, &c. in and about the business of the said Thomas, and money laid out in that behalf, and a quantum meruit thereto, with a common conclusion.

In consideration plaintiff had lent defendant's testator seventy pounds, testator promised either to make plaintiff a mortgage, or repay him the money, but did neither. From a Latin precedent of Mr. Boyle.

Francis Wilkins against Thomas Dand, Executor of Wm. Dand. FOR THAT WHEREAS the said Wm. in his life time, to wit, on the twenty seventh day of April, in the year of our Lord one thousand seven hundred and twenty two, at in the county aforesaid, in consideration that the said Francis at the special instance and request of him the said Wm. in his life time had lent and advanced to the said Wm. the sum of seventy pounds, undertook, and then and there faithfully promised the said Francis to make a mortgage therefore to him the said Francis, or otherwise to pay him the said sum of money with interest for the same, when he should be afterwards thereto requested.

AND WHEREAS the said Wm. in his life time afterwards, to wit, on the day and year aforesaid, at aforesaid, was indebted to the said Francis in other seventy pounds, for money by the said Francis before that time lent and advanced to the said Wm. and at his like special instance and request; and being so indebted, he the said Wm. in his life time in consideration thereof, afterwards, the same day and year, at aforesaid, undertook, and then and there faithfully promised the said Francis to make a mortgage to the said Francis for the same, or otherwise to pay him the last mentioned sum of money when he should be afterwards thereto requested. (*A count for seventy pounds money lent; another for money had and received, with this conclusion.*—Yet the said Wm. in his life time, and the said Thomas after the death of the said Wm. not regarding the aforesaid several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Francis in this particular, have not made, nor hath either of them made

made a mortgage for the said several sums of money in the said first and second promises and undertakings mentioned, or of any part thereof, or either of them, to the said *Francis*, nor have paid, nor hath either of them yet paid the said several sums of money in the said several promises above mentioned, or any part thereof, or of any of them, to the said *Francis* (although to do this the said *Wm.* in his life time often, and the said *Thomas* after the death of the said *Wm.* on the day of at afore said, by the said *Francis* were requested) but they to make the said mortgage, or to pay the said several sums of money to the said *Francis*, have hitherto wholly refused, and the said *Thomas* still doth refuse, to the said *Francis* his damage of ninety pounds, and therefore he brings his suit, &c.

Middlesex. *Lewis Jones* a debtor, &c. against *Ann Bowen* present, &c. FOR THAT WHEREAS the said *Ann* on the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirteen, at in the county afore said, was indebted to the said *Lewis* in six pounds, for hay and pasturage before that time found and provided by the said *L.* for divers cattle of the said *Ann*, and at her special instance and request, and for the work and labour, care and diligence of the said *L.* before that time done, performed, and bestowed by the said *L.* in and about the business of the said *A.* and at her like request; and being so indebted, she the said *A.* in consideration thereof, afterwards, to wit, the day and year afore said, at afore said, undertook and then and there faithfully promised the said *L.* that she the said *A.* would either pay to the said *L.* the said six pounds, or would discharge the said *L.* from a certain note of the said *L.* in writing, by him the said *L.* made and delivered before that time to one *R. S.* for the payment of six pounds to the said *R. S.* for rent due from the said *L.* to the said *R. S.* yet the said *A.* not regarding her said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *L.* in this particular, hath not yet paid the said

In consideration of defendant's being indebted to plaintiff in six pounds for horse meat, &c. defendant promised either to pay it, or to indemnify plaintiff from a note he had given to a third person for six pounds rent, but did neither.

From a Latin precedent of Mr. Bostle.

said six pounds to the said *L. J.* nor in any wise discharged him the said *L. J.* from his said note so as aforesaid made and delivered to the said *R. S.* (for that the said *A.* hath not at any time hitherto paid to the said *R. S.* the said six pounds mentioned in the said note, and by him the said *L.* and *J.* and payable to the said *R. S.* or in any wise satisfied him for the same) but the said note still remains and is in force against him the said *L. J.* (although to do this the said *A.* afterwards, to wit, on the tenth day of *May*, in the year of our Lord one thousand seven hundred and sixteen, and often, as well before as afterwards, at *Westminster*, aforesaid, by the said *L. J.* was requested) but she to pay the said *L.* or to discharge him the said *L.* from the said note hath hitherto wholly refused, and still refuses, whereupon he says that he is prejudiced, &c.

In consideration plaintiff had paid forty pounds with her son to defendant as an apprentice assigned over to defendant by another master, defendant promised plaintiff to return twenty pounds in case her son did not live with him three years; he did not stay that time, nor did defendant return the said twenty pounds. From a Latin precedent of Mr. *Boyle*.

Peter Nettleton at the suit of *Sarah Hamerton, &c.* THAT WHEREAS before the making of the promise hereafter mentioned, one *Robert Hamerton*, son of the said *Sarah*, had put himself clerk to one *Thomas Hutton*, one of the attorneys of the court of our sovereign lord the now King of the bench here, to wit, at *W.* in the county of *Middlesex*, to be instructed in the mystery or business of such attorney, to serve with him in the manner of a clerk, from the feast of *St. Michael* the archangel, in the year of our Lord one thousand seven hundred and seventeen, to the full end and term of five years then next following, to wit, at in the county aforesaid.

AND WHEREAS on the eighteenth day of *July*, in the year of our Lord one thousand seven hundred and eighteen, at aforesaid, in consideration that the said *Thomas Hutton*, at the special instance and request of the said *Peter N.* with the consent, assent, and agreement, as well of the said *Robert H.* as of the said *Sarah* his master, had assigned over the said *Robert H.* to the said *Peter N.* for the residue of the said term then to serve by the said *Robert H.* to be served with the said *Peter N.* and also in consideration of the sum of forty pounds then and there had and received by the said *Peter N.* with the said *Robert*

bert H. on that occasion, he the said *Peter N.* undertook, and then and there faithfully promised the said *Sarah* to return to the said *Sarah* the mother of the said *Robert H.* the sum of twenty pounds, provided the said *Robert H.* should not settle with the said *P. N.* for the term of three years, to be computed from the said feast of St. *Michael* the archangel, in the year of our Lord one thousand seven hundred and seventeen, aforesaid; and the said *Sarah* in fact says, that the said *Robert H.* did not serve with the said *P. H.* for the said term of three years, to be computed from the said feast of St. *Michael* the archangel, in the year of our Lord one thousand seven hundred and seventeen aforesaid, but within that term, to wit, on the day of in the year of our Lord left the said *Peter N.* to wit, at aforesaid; yet, &c. (*Common conclusion.*)

Wm. Thompson, a debtor, &c. against *Lord Herbert*, Baron of *Shurbury*, present, &c. FOR THAT WHEREAS the said *Lord Herbert*, on the sixth day of *January*, in the year of our Lord one thousand seven hundred and five, at *L.* to wit, in the parish of *St. M. le B.* in the ward of *Cheap*, in consideration that he the said *Wm.* at the special instance and request of the said *Lord H.* had paid into the hands of the said *Lord H.* five pounds seven shillings and six pence of lawful &c. to the proper use of the said *Lord H.* undertook, and then and there faithfully promised the said *Wm.* to pay to the said *Wm.* the sum of twenty pounds, if he the said *Lord H.* should take to himself a wife within six months then next following, and to pay to the said *Wm.* the sum of one hundred pounds if the said *Lord H.* should ever marry after the expiration of the said term of six months; and the said *Wm.* in fact says, that although he the said *Lord H.* did not marry within six months then next following, yet the said *Wm.* says, that he the said *Lord H.* after the expiration of the said term of six months then next following, to wit, on the day of in the year of our Lord at *L.* aforesaid, in the parish and ward aforesaid, took to his wife one and by reason thereof the said

In consideration plaintiff had paid defendant five guineas, defendant promised to pay plaintiff twenty pounds if he married in six months, and a hundred pounds if he ever married.

From a Latin precedent of Mr. *Boyle*.

DECLARATIONS, PLEADINGS, &c.

said sum of one hundred pounds became due and payable from the said Lord *H.* to the said *Wm.* to wit, at *L.* aforesaid, in the parish and ward aforesaid, yet the said Lord *H.* not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Wm.* in this particular, hath not yet paid the said sum of one hundred pounds, or any part thereof, to the said *Wm.* (although to do this the said Lord *H.* afterwards, and after the marriage celebrated between them the said Lord *H.* and the said to wit, on the day of in the year of our Lord at *L.* aforesaid, in the parish and ward aforesaid, by the said *Wm.* was requested) but he to pay the same to him hitherto wholly hath and still doth refuse.

A count for one hundred pounds had and received, and common conclusion to that count.

Plaintiff
bought a
chariot of
defendant,
who pro-
mised to
keep it in
repair a
twelve
month, but
did not.

From a Latin prece-
dent of Mr.
Boyle.

Thomas Panton, Esq; complains of *John Probart*, being, &c. FOR THAT WHEREAS, on the day of in the year of our Lord at in the county aforesaid, in consideration that he the said *Thomas*, at the special instance and request of the said *John*, had bought of the said *John* a *Berlin* chariot at the rate or price of eighty pounds therefore then and there paid by the said *Thomas* to the said *John*, he the said *John* undertook, and then and there faithfully promised the said *Thomas* to repair that chariot, and to put and keep the same in good and sufficient repair, at his own proper costs, as often as occasion should require, for the space of one whole year then next following; and the said *Thomas* in fact says, that although the said chariot afterwards, to wit, on the day of in the year aforesaid, and on divers other days and times between that day and the end and expiration of that year was in the greatest decay for the want of repairing, and greatly wanted reparation, to wit, at aforesaid, in the county aforesaid, whereof the said *John* from time to time there had due notice from the said *Thomas*, yet the said *John* not regarding his said promise and undertaking, but contriving and fraudulently intending

ing craftily and subtilly to deceive and defraud the said *Thomas* in this particular, hath not repaired the said chariot, so wanting such reparation, or kept, or would or hath regarded to keep the chariot in good and sufficient repair during the time aforesaid, at his own proper cost, but to repair the same, or to keep the same in good and sufficient repair according to his promise aforesaid, hath wholly neglected, and refused (although to do this the said *John* afterwards, to wit, on the said day of in the year aforesaid, and often afterwards, at aforesaid, by the said *Thomas* was requested) but the said *John* hath hitherto wholly refused, and still refuses to perform his said promise; and the said *Thomas* hath necessarily laid out and expended divers sums of money, in the whole amounting to in and about the necessary repairing and amending of the same chariot during that time, to wit, at aforesaid, whereupon he says he is prejudiced and hath damage to the value of twenty pounds, and therefore he brings his suit, &c.

Liverpool, in the } *Thomas Steers, Wm. Marsh* and
county of *Lancaster*. } *John O'Kill*, against *Geo. Smith*,
of a plea of trespass on the case, to their damage of
four pounds nineteen shillings, and there are pledges to
prosecute, to wit, *John Doe* and *Rich. Roe*.

And thereupon the said *Thomas, Wm.* and *John*, by
their attorney, complain, THAT WHEREAS at the
time of the making of the promise hereafter mentioned,
to wit, on the thirty first day of *July*, in the eleventh
year of the reign of our Sovereign Lord *George*, now
King of *Great Britain*, &c. the said *Tho. Wm.* and *John*
were proprietors of a certain ship called the *Prince*
Frederick of *Liverpool*, then about to go and make a
certain intended voyage from the port of *Liverpool*
aforesaid, to *Rotterdam* in *Holland*, being in parts be-
yond the seas, and from thence to *Dublin* in the king-
dom of *Ireland*, being in parts beyond the seas, and
from thence to the port of *Liverpool* aforesaid, to wit,
at *Liverpool*, within the jurisdiction of this court.

Against a
mate of a
ship who af-
ter he had
been hired
to go a
voyage, re-
fused to
serve.
From a La-
tin prece-
dent of *Mr.*
Bottle.

AND

AND WHEREAS the said *George* afterwards, to wit, the same day and year, at *Liverpool* aforesaid, within the jurisdiction of the said court, in consideration that the said *Thomas, Wm. and John*, at the special instance and request of him the said *George*, had retained him the said *George* to go and to serve them the said *Thomas, Wm. and John*, as mate in and upon the said ship for and during that intended voyage so to be made, and had undertaken and then and there faithfully promised him the said *George* to pay him therefore the wages or salary of twenty three shillings and sixpence a month for every month for and during that voyage, he the said *George* undertook, and then and there, to wit, at *Liverpool* aforesaid, within the jurisdiction of this court, faithfully promised the said *Thomas, Wm. and John* to ship himself on board, and to go as mate in and upon the said ship in the said voyage, and to serve them the said *Thomas, Wm. and John* as mate in and upon the same ship, for and during that intended voyage; and although the said ship made and performed that voyage, and although the said *George* afterwards and before the beginning of that voyage, to wit, the same day and year, at *Liverpool* aforesaid, within the jurisdiction of the said court, shipped himself on board in and upon the same ship to go as mate in and upon the same ship in the same voyage, according to the form and effect of his said promise in that particular, yet the said *George* not regarding his said promise and undertaking as to his service in and upon the said ship for and during that voyage, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Thomas, Wm. and John* in this particular, hath not served, nor would nor hath regarded to serve them the said *Thomas, Wm. and John* as mate in and upon the said ship for and during that voyage according to his said promise and undertaking, but he the said *George* afterwards, and before the finishing of that voyage, to wit, on the first day of *November*, in the twelfth year of the reign of our sovereign lord the now King, at *Liverpool* aforesaid, within the jurisdiction of this court, departed from and left the said ship, and retired, withdrew, and absented

absented himself from the service of them the said *Thomas, Wm.* and *John*, and wholly neglected and refused to perform that voyage as mate in and upon the same ship for and during that voyage, and to serve them (although the said *George* to perform his said promise afterwards, to wit, the same day and year last above mentioned, and often afterwards, at *Liverpool* aforesaid, by them the said *Thomas, Wm.* and *John* was requested) but he the said *George* to serve them or to perform his said promise in that particular, hath wholly refused.

A count for money had and received, and common conclusion to that count.

George Jordan, late of, &c. was attached to answer Plaintiff put *John Simpson* of a plea of trespass on the case, &c. and thereupon, &c. THAT WHEREAS on the twentieth day of *February*, in the year of our Lord one thousand seven hundred and twenty three, and before and afterwards, the said *George* was master of a certain ship called the *Philip* of *London*, then being in the port of *Dublin*, in parts beyond the seas, and was then really, as he said, about to come and sail from thence as such master with and in the said ship (as a merchantable ship) in a voyage from *Dublin* aforesaid to the port of *London*.

AND WHEREAS on the said twentieth day of *February*, in the year aforesaid, at *L.* aforesaid, to wit, in the parish of *St. M. le B.* in the ward of *Cheap*, in consideration that the said *John*, at the special instance and request of him the said *George*, had delivered to the said *George* divers goods and merchandizes, to wit, three hundred barrels of oats of the said *John*, to the value of

in good order and condition, to be well and safely carried and transported by him in his said ship from *Dublin* aforesaid, to the port of *London* aforesaid (the dangers of the seas excepted) for a reasonable freight, salary, or competent sum of money to be therefore paid by the said *John* to the said *George*, he the said *George* undertook, and then and there, to wit, at *L.* aforesaid, in the parish and ward aforesaid, faithfully promised the said *John* to set sail with and navigate the said ship from the port of *Dublin* aforesaid, said,

300 barrels of oats on board defendant's ship then in the port of *Dublin*, to be transported to *London*, and defendant promised to set sail within a fortnight after the bills of lading, but staid two months longer, so that the oats were spoiled, and plaintiff lost his market.

From a Latin precedent of Mr. Bosse.

said, in and upon that voyage towards the port of *London* aforesaid, within a fortnight next after the signing of the bills of lading for the said goods and merchandizes, and well and safely to carry and transport the said goods and merchandizes in his said ship to the said port of *London* (the dangers of the sea excepted) and to deliver the same to the said *John* at the port of *London* aforesaid; and although the said *George* had and received the said goods and merchandizes at the port of *Dublin* aforesaid, to carry and transport as aforesaid, and although the said *George* afterwards, to wit, on the said twentieth day of *February*, in the year aforesaid, signed the bill of lading for the said goods and merchandizes with his own proper hand subscribed thereto, to wit, at *London* aforesaid, in the parish and ward aforesaid, yet the said *George* not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John* in this particular, did not set sail with or navigate the said ship from the port of *Dublin* aforesaid, towards the port of *London* aforesaid, within a fortnight then next following, nor would nor hath regarded to set sail with and navigate the said ship, but to do that, or to perform his said promise in that particular, hath wholly neglected and refused, (although the wind and weather after the signing of the said bills of lading of him the said *George*, to wit, on the twenty first day of *February*, in the year aforesaid, and on divers other days and times between the signing the bills of lading aforesaid, and the end and expiration of two weeks then next following, did permit and was convenient to and for the purpose aforesaid, and to begin and make that voyage; and although to do this the said *George* afterwards, to wit, on the said twenty first day of *February*, in the year aforesaid, and often afterwards, by the said *John* was requested, to wit, at *L.* aforesaid, in the parish and ward aforesaid) but he the said *George* to set sail with and navigate the said ship, or to perform his said promise, hath wholly refused and still refuses; and he the said *George* voluntarily staid and remained with the same ship and the said goods and
 merchan-

merchandizes of the said *John* therein loaded and shipped, in the said port of *Dublin*, for the space of two months then next following, whereby the said *John* not only lost all the use, advantage, and profit, which he might have had and received by the exportation of the said goods and merchandizes, but also the said oats being perishable goods and merchandizes, by the detaining thereof for the time aforesaid were greatly spoiled, and the said *John* lost the greatest part of the profit and benefit thereof, whereupon the said *John* says that he is prejudiced, and hath damage to the value of fifty pounds, and therefore he brings his suit, &c.

—To wit, be it remembered, that on *Friday* next after the morrow of the *Holy Trinity* in this same term, came here into court *Joseph Warne* by *Ralph Phelps* his attorney, and exhibited to the justices here his bill against *John Merifield*, gent. one of the attorneys of our lord the King's court of the *Bench* here present here in court in his own person in a plea of trespass on the case, the tenor of which said bill follows in these words, "To our lord the King's justices of the *Bench*, *Dorsetshire*, scil. *Joseph Warne* by *Ralph Phelps* his attorney, complains of *John Merifield*, gent. one of the attorneys of our lord the King's court of the *Bench* here present, here in court in his own person for this, that the said *John* not regarding the duty of his office of attorney of the said court of the *Bench* here, but designing, and maliciously and deceitfully intending to hurt and injure the said *Joseph* and unjustly to bring him into trouble and expence, and impoverish him thereby, upon the first day of *May*, in the sixth year of the reign of his present majesty King *George* the second, at *Cranborne*, in the said county, wrongfully, deceitfully and maliciously devised and contrived to bring an action of trespass in his said Majesty's said court here, against *Jane Harvey*, late of, &c. widow, in the name of the said *Joseph Warne*, without any order, warrant or authority from the said *Joseph* in that behalf had or obtained, and the said *John* in pursuance of his said malicious and deceitful devise and contrivance afterwards, to wit, in the term of the *Holy*

A memorandum and a declaration against an attorney for prosecuting without an authority in C. B. and the proceedings in C. B. recited.

Serj. Draper.

DECLARATIONS, PLEADINGS, &c.

Declaration
recited for
taking and
carrying
away turves
and peat,
and for dig-
ging up the
soil.

Holy Trinity, in the sixth and seventh years of the reign of his said Majesty, without any order, warrant or authority whatsoever of or from the said *Joseph* by the said *John* for that purpose had or obtained, impleaded the said *Jane Harvey* by the name of *Jane Harvey* late of *Verwood*, in the county of *Dorset* aforesaid, widow, at the suit of and in the name of the said *Joseph Warne*, by him the said *John Merifield* as attorney of the said *Joseph*, in the said court of the *Bench* here, to wit, at *Westminster*, in the county of *Middlesex*, and before Sir *Robert Eyre*, knight, and his brethren, then his said Majesty's justices of the *Common Bench* here, to answer to the said *Joseph* of a plea of trespass, FOR THAT the said *Jane* on the first day of *May*, in the year of our Lord one thousand seven hundred and thirty, and on divers days and times between that day and the first day of *May*, in the year of our Lord one thousand seven hundred and thirty three, with force and arms the turves and peat, to wit, one hundred cart loads of turves, and one hundred cart loads of peat of the said *Joseph*, to the value of ten pounds, at *Cranborne*, in the said county of *Dorset*, then lately found, did take, carry away, sell, consume and dispose of; and also that the said *Jane* on the said first day of *May*, in the said year of our Lord one thousand seven hundred and thirty, and on divers other days and times between that day and the said first day of *May*, in the said year of our Lord one thousand seven hundred and thirty three, with force and arms, the close called *Verwood Common* of the said *Joseph*, at *Cranborne* aforesaid, did break and enter the soil, to wit, five hundred perches of the soil of the said *Joseph* then dug and turned up, and a great quantity of other turves and peat, to wit, one hundred cart loads of other turves, and one hundred cart loads of other peat in the said close then did dig up, and the said last mentioned turves and peat of the said *Joseph* to the value of other ten pounds, did take, carry away, sell, consume and dispose of, and other wrongs to the said *Joseph* did to the great damage of the said *Joseph*, and against the peace of our sovereign lord the now king, whereby the said *Joseph* said he was prejudiced and had damage

damage to the value of twenty pounds, and therefore he brought that suit, and thereupon the aforesaid *Jane* by *John Glas* her attorney came and defended the force and injury, when, where and in such manner as the said court should think fit, and said, that she was in no wise guilty of the trespass aforesaid, as the said *Joseph* above complained against her, and of that she put herself upon the country, and the aforesaid *Joseph* likewise; and it was thereupon so far proceeded in the said court here, and without the order, warrant or authority of the said *Joseph* as aforesaid, that afterward, to wit, in the term of *Easter*, in the seventh year of the reign of his present majesty, it was considered by the said court here, that the said *Joseph* and his pledges should be sought, &c. and that the said *Jane* should go thereof without a day, &c. and that the said *Jane* should recover against the said *Joseph* her damages by occasion of the premises, to thirteen pounds, ten shillings, by the discretion of the justices here to the said *Jane* at her request for her costs and charges by her in that behalf sustained, according to the form of the statute, &c. in the court here adjudged, &c. by reason of which said deceitful prosecution of the said *Joseph* by him the said *John*, in the name of the said *Joseph*, without the order, warrant or authority of the said *Joseph* as aforesaid, he the said *Joseph* became liable to and chargeable with the payment of the said thirteen pounds, ten shillings to the said *Jane*, and to prevent troubles was obliged to pay and did pay the same, to wit, at *Cranborne* aforesaid, and hath also been forced to lay out and expend divers other sums of money upon account of the premises, and in order to be discharged therefrom, amounting to the sum of twenty pounds; and the said *Joseph* further complains, that the said *John* not regarding the duty of his said office of attorney of the said court here, but further designing and maliciously and deceitfully intending to hurt and hinder the said *Joseph*, and unjustly to bring him into further trouble and expence, and impoverish him thereby afterwards, to wit, upon the second day of *May*, in the

DECLARATIONS, PLEADINGS, &c.

the sixth year of the reign of his present Majesty at *Cranborne* aforesaid, wrongfully, deceitfully, and maliciously devised and contrived to bring an action of trespass in his said Majesty's court of the *Bench* here, against one *William Harvey* late of *Verwood*, in the county of *Dorset*, potter, in the name of the said *Joseph*, without an order, warrant or authority from the said *Joseph* for that purpose had or obtained, and the said *John*, in pursuance of his said malicious and deceitful device and contrivance last above-mentioned, afterwards, that is to say, in the term of the *Holy Trinity* in the sixth or seventh years of the reign of his said present majesty King *George* the second, without any order, warrant or authority whatsoever of or from the said *Joseph* by the said *John* for that purpose had or obtained, impleaded the said *Wm. H.* by the name of *Wm. H.* of *Verwood*, in the county of *Dorset* aforesaid, potter, at the suit of and in the name of the said *Joseph* by him the said *John* as attorney of the said *Joseph* in the said court of the *Bench* here, to wit, at *Westminster*, in the county of *Middlesex* aforesaid, before the said Sir *Robert Eyre*, knight, and his brethren, then his Majesty's justices of the *Common Bench* here, to answer to the said *Joseph* of a plea of trespass for that the said *Wm.* on the first day of *May*, in the year of our Lord one thousand seven hundred and thirty, and on divers days and times between that day and the first day of *May*, in the year of our Lord one thousand seven hundred and thirty three, with force and arms the turves and peat, &c. (*reciting the above declaration and plea as aforesaid, in the name of Wm. H.*) and it was thereupon so far proceeded in the said court here without the order, warrant or authority of the said *Joseph* as aforesaid, that afterwards, to wit, in the term of *Easter*, in the seventh year of the reign of his present Majesty, it was considered by the said court here, that the said *Joseph* and his pledges of prosecution should be thereof in mercy, &c. and that the name of the pledges should

be

* 7
suted.

be fought, &c. and that the said *Wm.* should go thereof without a day, &c. and that the said *Wm.* should recover against the said *Joseph* his damages by occasion of the premises to thirteen pounds, ten shillings, by the discretion of the justices here to the said *Wm.* at his request, for his costs and charges by him in that behalf sustained, according to the form of the statute, &c. by the court here adjudged, by reason of which said deceitful prosecution of the said *Wm.* by him the said *John M.* in the name of the said *Joseph*, without the order, warrant or authority of the said *Joseph* as aforesaid, he the said *Joseph* became liable to and chargeable with the payment of the said thirteen pounds, ten shillings to the said *Wm.* and to prevent trouble was obliged to pay and did pay the same, to wit, at *Cranborne* aforesaid, and hath also been forced to lay out and expend divers other sums of money upon account of the premises last above-mentioned, in order to be discharged therefrom, amounting to the sum of other twenty pounds, whereupon he says he is prejudiced, and hath damage to the value of one hundred pounds, and thereupon he prays relief, &c*.

—To wit, *Mary Guy*, widow, executrix, &c. of *Edmund Guy*, deceased, complains of *Giles Shepherd*, being in the custody, &c. FOR THAT WHEREAS the aforesaid *Giles*, on the first day of *July*, in the year of our Lord one thousand seven hundred and thirty three, at in the county aforesaid, was indebted to the said *Edmund* in his life time, as attorney or solicitor for the said *Giles*, in ten pounds of lawful money of *Great Britain*, for his fees, labour and care at, in and about prosecuting and defending several suits of and for the aforesaid *Giles*, and divers other persons in the court of the said lord the King, before the King himself, at the special instance and request of the aforesaid *Giles*, and

L before

A declaration by an executrix of an attorney for fees, &c. in the court of B. R.

Serj. Bostle.

* To this declaration not guilty was pleaded, and plaintiff nonsuited.

DECLARATIONS, PLEADINGS, &c.

before that time used, done and bestowed, as his attorney or solicitor, and on his retainer, and also for money by the said *Edmund* in his life time for the aforesaid *Giles*, at his instance and request before that time in that behalf expended, laid out and paid, and being thereupon so indebted, the aforesaid *Giles* in consideration thereof afterwards, that is to say, the same day and year aforesaid, at aforesaid, in the county aforesaid, undertook, and to the said *Edmund* in his life time then and there faithfully promised to pay him the same sum of money.

AND WHEREAS ALSO, the said *Giles* afterwards, that is to say, on the said first day of *July*, in the year aforesaid, at aforesaid, in the county aforesaid, in consideration that the said *Edmund* in his life time as attorney or solicitor for the said *Giles*, at the like instance and request of the aforesaid *Giles*, and on his retainer, had before that time done, used, performed and bestowed other labour and care in and about prosecuting and defending all other suits of and for the aforesaid *Giles* and divers other persons in the said court, and had at the like instance and request of the aforesaid *Giles*, before that time expended, laid out and paid divers other sums of money in that behalf, undertook, and to the said *Edmund* in his life time then and there faithfully promised to pay him as much money as he should reasonably deserve to have for the same labour and care last mentioned, and also as much as he had expended, laid out and paid in that behalf; and the aforesaid *Mary* in fact saith, that the said *Edmund* in his life time reasonably deserved to have for the same labour and care last mentioned of the aforesaid *Giles*, other ten pounds of like lawful money, and that he had expended, laid out and paid in that behalf other ten pounds, that is to say, at aforesaid, in the county aforesaid, whereof the aforesaid *Giles* afterwards, that is to say, the same day and year then had notice.

Another count for as well work and labour, care and industry in and about his affairs and business, as also for divers sums of money expended, laid out and paid by the
testator.

testator. *A quantum meruit for other work and labour, care and industry in and about other affairs and business, and also for divers other sums of money had, expended, laid out and paid.* YET THE AFORESAID, &c.

—To wit, *Thomas Lake*, late of, &c. was attached to answer *Francis Page* of a plea of trespass on the case, and whereupon the said *Francis* by his attorney, complains, THAT WHEREAS the said *Thomas* the first day of *May*, in the year of our Lord one thousand seven hundred and thirty three, at in the county aforesaid, was indebted to the said *Francis* in the sum of fifty pounds of lawful money of *Great Britain*, as well for so much money by the said *Francis*, at the special instance and request of the said *Thomas* in and about the affairs and business of the said *Thomas* before that time paid, laid out and expended, as for taking, riding and performing divers journies at the like special instance and request of the said *Thomas* before that time by the said *Francis*, rode, taken and performed, and also for drawing, writing and ingrossing divers deeds and writings, and for other work and labour by the said *Francis* at the special instance and request of the said *Thomas*, for the said *Thomas* before that time drawn, wrote and ingrossed, done and performed, and being so indebted, the said *Thomas* afterwards, on the same day and year, at aforesaid, upon himself assumed, and to the said *Francis* then and there faithfully promised to pay unto him the said sum of fifty pounds when he the said *Thomas* should be afterwards thereunto requested.

Declaration
for money
laid out in
and about
defendant's
business, and
for riding di-
vers jour-
nies, and for
drawing and
ingrossing
divers deeds
and writings.

AND WHEREAS ALSO the said *Thomas* afterwards, on the same day and year, at aforesaid, in consideration that the said *Francis* had at the like special instance and request of the said *Thomas* before that time paid, laid out and expended for the said *Thomas* in and about the other affairs and business, divers other sums of money, and had also rode, taken and performed

for the said *Thomas* and at his request divers other jour-
 nies, and also had drawn, wrote and ingrossed divers
 other deeds and writings for the said *Thomas*, and had
 done and performed for him other work and labour at
 his the said *Thomas's* special instance and request, upon
 himself assumed, and to the said *Francis* then and there
 faithfully promised to pay unto him as well all such
 sums of money as he the said *Francis* had so as afore-
 said for the said *Thomas*, paid laid out and expended, as
 also as much money as he the said *Francis* for the jour-
 nies last mentioned by him to be taken and performed,
 and for drawing, writing and ingrossing the deeds and
 writings last mentioned, and for the work and labour
 last mentioned, as he the said *Francis* reasonably de-
 served for the same, when he the said *Thomas* should be
 afterwards thereunto requested; and the said *Francis* in
 fact saith, that he other fifty pounds of like lawful
 money for the said *Thomas* had paid, laid out and
 expended, and that he the said *Francis* for the jour-
 nies, and for drawing, writing and ingrossing the deeds
 and writings, and also for the work and labour last
 mentioned, reasonably deserved to have of the said
Thomas other fifty pounds of like lawful money, where-
 of the said *Thomas* then and there had notice.

AND WHEREAS the said *Thomas* afterwards, on
 the same day and year, at aforesaid, came
 to account with the said *Francis* of and for, and
 concerning divers other sums of money by the said
Thomas to the said *Francis* before that time due and
 owing, and upon that account the said *Thomas* was
 then and there found in arrear towards the said *Francis*
 in the further sum of like lawful money, and being
 so as aforesaid found in arrear, the said *Thomas* after-
 wards, on the same day and year, at afore-
 said, in consideration thereof, upon himself assumed,
 and to the said *Francis* then and there faithfully pro-
 mised to pay unto him the said sum of fifty pounds
 last mentioned, when he the said *Thomas* should be
 afterwards thereunto requested. YET THE AFORE-
 SAID, &c.

To

To wit, *Robert Cooper*, gent. by his attorney, complains of *Richard Smart*, gent. one of the attornies of the court of our lord the King that now is, of the *Bench*, present here in court in his proper person, FOR THAT WHEREAS heretofore, that is to say, in the term of St. *Michael*, in the ninth year of the reign of our said lord the King that now is, before our said lord the King at *Westminster*, came the said *Robert Cooper* then one of the attornies of the court of our said lord the King, before the King himself present there in the same court in his proper person, and brought into the said court of our said lord the King, before the King himself then there his bill against one *John Hudson*, gent. then being in the custody, &c. of a plea of trespass and assault, then and there found pledges to prosecute, to wit, *John Doe* and *Richard Roe*, and by the same bill did complain against the said *John Hudson*, for that on the fifteenth day of *September*, in the ninth year of the reign of our said lord the King, he the said *John* with force and arms, that is to say, with fists, swords, staves and knives made an assault on the said *Robert*, at *Newbury*, in the county of *Berks*, and him beat, wounded and evilly treated, so that his life was greatly despaired of, and other enormities to him then and there did, against the peace of our said lord the now King, and to the damage of him the said *Robert* forty pounds, and therefore he brought his suit, &c. and thereupon the aforesaid *John* afterwards, in the term of St. *Hilary*, in the said ninth year of the reign of his said Majesty, pleaded and issue was joined between the said parties abovesaid, to be tried by a jury of the said county of *Berks*, and the record of *nisi prius* was afterwards made up and sent down for the trial of the said cause between the said parties at the then next assizes to be held for the said county of *Berks*, at *Reading*, in the same county of *Berks*, on *Monday* the eighth day of *March*, in the said ninth year of the reign of his said present Majesty, before the then justices of our said lord the King assigned to hold the assizes in the said county of *Berks*, according to the form of the statute in such case made and provided,

A bill against an attorney for promising to pay costs of his client in a cause for a trespass and assault to the plaintiff if he would put off the trial of it after the record was made up and sent down to be tried, and paying him one pound, eleven shillings and sixpence in part for the damages.

Serj. *Bootle*.

vided, at which said assizes then and there held, he the said *Robert* was ready to try, and then and there intended to try the said cause between the said parties, and the said cause was then and there ready to be tried, whereof the aforesaid *Richard Smart* afterwards, during the assizes, that is to say, on the tenth day of *March*, in the ninth year of the reign of his said present Majesty had notice, that is to say, at the parish of in the said county of and thereupon the aforesaid *Richard Smart* afterwards, that is to say, the same day and year last abovementioned, at the parish of in the said county of having made application on the behalf of the aforesaid *John H.* that the said cause might not be tried at the aforesaid assizes, but that the trial thereof might be put off and all further proceedings therein to cease, in consideration that the said *R. Cooper* at the special instance and request of the aforesaid *Richard S.* in that behalf had desisted to try the said cause at that assizes, and had stopped the trial thereof, and had ceased all further proceedings therein, then and there paid to the use of the said *Robert C.* the sum of one pound, eleven shillings and sixpence for his damages occasioned by the trespass aforesaid in that behalf, and also then and there undertook, and to the said *Robert C.* faithfully promised to pay to one *R. Cartwright*, or to the said *Robert C.* the plaintiff in that cause, all manner of costs and charges in that action on demand, being for the ending of the said action between the said parties; and the said *Robert C.* further saith, that the costs and charges in that action and which the said *Robert C.* had expended and been put unto therein, amounted in the whole unto the sum of twenty pounds, five shillings and ten pence, that is to say, at the parish of in the county of whereof the aforesaid *Richard Smart* afterwards, that is to say, on the first day of *April*, in the ninth year aforesaid, then had notice; nevertheless the aforesaid *Richard S.* not regarding his promise and undertaking aforesaid, but designing and fraudulently intending him the said

Robert

Robert C. in this behalf, craftily and subtilly to deceive and defraud of the aforesaid sum of twenty pounds, five shillings and ten pence for the said costs and charges in the said action so as aforesaid expended and laid out or any part thereof to the aforesaid *Richard Cartwright*, or to him the said *Robert C.* or to either of them, hath not paid (although to do the same the aforesaid *Richard S.* afterwards, that is to say, on the same day and year last abovementioned and often afterwards, at the parish of _____ in the said county of _____ was by the said *Robert C.* requested) but to pay the same to the said *Richard Cartwright*, or to him the said *Robert C.* or to either of them hath hitherto altogether refused and still doth refuse, to the damage of the said *Robert C.* thirty pounds, and thereupon he prayeth remedy, &c.

Hants, To wit. Wm. Gray late of *Wexon*, in the county aforesaid, yeoman, was attached to answer *Bartholomew Drower* in a plea of trespass on the case, &c. And whereupon the said *Bartholomew* by his attorney, complains THAT WHEREAS the aforesaid *Wm.* designing and maliciously intending the said *Bartholomew* unjustly to injure, oppress and impoverish, at the general quarter session of the peace of our sovereign lord the King, held at the Castle of *Winchester*, in and for the said county of *Southampton*, on Tuesday in the week next after the feast of *St. Michael* the archangel, to wit, the eighth day of *October*, in the eighth year of the reign of our said lord the King, before *Thomas Dermer, Esq;* (naming all the justices at the session) and other their fellows, then justices of our said lord the King, assigned to keep the peace of our said lord the King in and for the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanours committed in the same county, did falsely and maliciously, and without any reasonable or probable cause, cause and procure one *Jeremiah Parkinson* late of *Hitchin* ferry, in the parish of *St. Mary*, in the county aforesaid, labourer, and him the said *Bartholomew* by the name of _____

A declaration for a malicious indictment at the sessions.

Serj. Bootle.

of *Bartholomew D.* late of the same place, labourer, to be falsely indicted, That from the time whereof the memory of man is not to the contrary, &c. (*reciting the * indictment verbatim*) and the same indictment against him the said *Bartholomew* did falsely and maliciously prosecute and cause to be prosecuted, until he the said *Bartholomew* afterwards, that is to say, at the general quarter sessions of the peace of our said lord the King, held at the *Castle of Winchester*, in and for the said county of *S.* on *Tuesday* in the week next after the feast of *Epiphany*, to wit, the fourteenth day of *January*, in the eighth year aforesaid of the reign of our said sovereign lord the King, before the Honourable *Edward Stawell*, Esq; (*naming all the justices at the session*) and other their fellows, then justices of our said lord the King in and for the said county of *S.* and also to hear and determine divers felonies and trespasses and other misdemeanours committed in the same county, was in due manner acquitted of the premisses in the said indictment above charged upon him, by pretext of which said indictment and by reason of the premises touching the same indictment, he the said *Bartholomew* was compelled and under a necessity to expend and lay out divers large sums of money in his defence in that behalf, and also to undergo great labours as well in body and mind on that occasion, that is to say, at the parish of *St. Mary* aforesaid, in the county aforesaid, whereupon the aforesaid *Bartholomew* saith, that he is injured and damnified to the value of sixty pounds, and thereupon he bringeth suit, &c.

Declaration
for an infant
by her next
friend on a
malicious in-
dictment at
the assizes
for felony.
and plaintiff
bailed out of
prison on
commitment.
Serj. Boodle.

Hants, To wit. *Elizabeth Charles*, spinster, who is under the age of twenty one years, by *William Talden*, Esq; her next friend, hereunto specially admitted by his Majesty's court here, complains of

* *As to a malicious indictment for a trespass where it is found ignoramus no action lies, otherwise when upon an acquittal; and the reason is, the law in that case supposes the party to be put to expence, but it seems an action will lie on an indictment for felony or any capital offence though it be found ignoramus, because the party suffers in his character, and in a trespass that cannot be, for which reason no action lies then unless upon an acquittal.*

of *Joseph White* and *Elizabeth* his wife, being in the custody, &c. FOR THAT WHEREAS she the said *Elizabeth C.* now is a good, faithful and honest subject of this kingdom, and as such from the time of her birth hitherto hath behaved and conducted herself, and hath for all the time aforesaid been reputed and esteemed to be a person of good name, credit and behaviour amongst all her neighbours and other good and honest subjects of this kingdom, and hath for all her life time past hitherto lived and continued free, unblemished and wholly unsuspected from being guilty of any theft, robbery, felony or any such pernicious crime, or from the suspicion of them or any of them, whereby the said *Elizabeth C.* had deservedly got and obtained to herself the benevolence, good opinion and credit of divers venerable and faithful subjects of this kingdom; nevertheless the aforesaid *Joseph White* and *Elizabeth* his wife not being ignorant of the premises, but greatly envying the happy state and condition of the said *Elizabeth C.* and contriving and maliciously intending not only to hurt, injure, prejudice and damnify the said *Elizabeth C.* in her good name, fame, credit and reputation, and to cause her to be brought into hatred, scandal, public ignominy, infamy and disgrace, but also to cause her to be esteemed and reputed to be a thief and a felon, and to fatigue, oppress and vex her wrongfully, and to cause her the said *Elizabeth C.* to be imprisoned, and to be kept and detained in prison, and to bring her into danger of suffering the pains and penalties of the laws and statutes of this realm made and provided against such offenders, and to cause her to undergo great labours, both in body and mind, and to expend and lay out great sums of money, on the twentieth day of *June*, in the year of our Lord one thousand seven hundred and thirty five, at *Eastmean*, in the county of *Southampton* aforesaid, did falsely and maliciously, and without any reasonable or probable cause, impose the crime of felony on the said *Elizabeth C.* and did then and there falsely and maliciously charge and accuse her the said *Elizabeth*

beth C. with feloniously stealing and carrying away one Holland apron of the goods and chattels of the said *Joseph White*, and afterwards, to wit, the same day and year abovesaid, at *Eastmean* aforesaid, in the county aforesaid, did falsely and maliciously cause and procure the said *Elizabeth* to be taken and arrested, and as a felon to be brought before Sir *Simeon Stuart*, baronet, then one of the justices of our said lord the King assigned to keep his Majesty's peace in the said county of *S.* and also to hear and determine divers felonies, trespasses and other misdemeanours committed within the same county, and did then and there cause and procure the said *Elizabeth C.* to be examined of and upon the said premises before the said justice, and on that account the said *Elizabeth C.* was detained under the custody of one *Wm. W.* then tythingman of the tything of *Eastmean* aforesaid for a long while, to wit, until one *Wm. P.* and one *Thomas C.* as bail or pledges for the said *Elizabeth C.* afterwards, that is to say, on the twenty third day of *June*, in the said year of our Lord one thousand seven hundred and thirty five, at *Eastmean* aforesaid, in the county aforesaid, before *George Bridges*, Esq; and *Wm. Yalden*, Esq; then two of his Majesty's justices assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanours committed in the same county, had entered into a recognizance and separately acknowledged themselves indebted to our said sovereign lord the King, in the sum of twenty pounds, with a condition for the said *Elizabeth C.*'s personal appearance at the then next assizes and general goal delivery for the county of *S.* aforesaid, then and there to answer unto such matters as should be then and there objected against her by the said *Joseph White* touching the said felony; and the aforesaid *Joseph W.* and *Elizabeth* his wife of their further malice towards the said *Elizabeth C.* afterwards, to wit, at the session of our said lord the King of *Oyer and Terminer* holden at the *Castle of Winchester* in and for the said county of *S.* on *Wednesday* the sixteenth day of *July*, in the ninth year of the reign of our lord the

the King before *Philip Lord Hardwicke*, then lord chief justice appointed to hold pleas before the King himself, Sir *John Fortescue Aland*, knight, then one of the justices of the court of *Common Bench*, *Christopher Hawkins*, Esq; and other their associates, then justices of our said lord the King assigned to hear and determine of all treasons, felonies and other evil doings done or committed within the said county, did falsely and maliciously, and without any reasonable or probable cause whatsoever, *cause and procure her the said Elizabeth C.* by the name of *Elizabeth C. of Eastmean*, in the county of *S.* aforesaid, single woman *to be false indicted*, FOR THAT the said *Elizabeth C.* the twentieth day of *September*, in the eighth year of the reign of our said lord the King, with force and arms, at *Eastmean* aforesaid, one Holland apron of the value of two shillings of the goods and chattels of the said *Joseph W.* then and there being found, then and there feloniously did steal, take and carry away, against the peace of our said lord the King, his crown and dignity, which said indictment the said justices of our said lord the King of *Oyer and Terminer* by their own proper hands, afterwards, to wit, at the delivery of the goal of our said lord the King of his said county of *S.* of the prisoners therein being holden, at the *Castle of Winchester* aforesaid in and for the same county, on the said sixteenth day of *July*, in the ninth year aforesaid of the reign of our said lord the King, before the said *Philip Lord Hardwicke* and Sir *John Fortescue Aland*, justices of our said lord the King assigned to deliver the goal of the said county of *S.* of the prisoners therein being, did deliver there into court to be determined upon record, at which said session of *Oyer and Terminer* and goal delivery, being the next assizes and general goal delivery for the said county after the entering into the said recognizance, she the said *Elizabeth C.* did appear in her own proper person according to the form of the condition of the said recognizance, and the aforesaid *Joseph W.* and *Elizabeth* his wife did prosecute and cause and procure to be

Indictment
recited.

be prosecuted falsely and maliciously the same indictment until afterwards, at the same delivery of the goal of our said lord the King of his said county of S. of the prisoners therein being, holden at the *Castle of Winchester* aforesaid, in and for the same county, on the said sixteenth day of *July*, in the ninth year aforesaid of the reign of our said lord the King before the said justices, the said *Elizabeth C.* was in due manner acquitted and discharged of the premises in the said indictment above charged upon her, and the said *E. C.* doth aver, that she the said *E. C.* was not nor is in any wise guilty of the premises in the said indictment above laid to her charge.

AND WHEREAS the aforesaid *Joseph W.* and *E.* his wife, of their further malice towards the said *Elizabeth C.* afterwards, that is to say, on the said twentieth day of *June*, in the said year of our Lord one thousand seven hundred and thirty five, at *Eastmean* aforesaid, in the county aforesaid, did falsely and maliciously, and without any reasonable or probable cause, again impose the crime of felony on the said *E. C.* and afterwards, to wit, at the said session of our said lord the King of *Oyer and Terminer* holden at the said *Castle of Winchester* in and for the said county of S. on *Wednesday* the said sixteenth day of *July*, in the said ninth year of the reign of our said lord the King, before the said *Philip Lord Hardwicke*, then lord chief justice appointed to hold pleas before the King himself, Sir *John Fortescue Aland*, knight, then one of the justices of the court of *Common Pleas*, *Christopher Hawkins*, Esq; and other their associates, then justices of our said lord the King assigned to hear and determine of all treasons, felonies and other evil doings, done or committed within the said county, did falsely and maliciously, and without any reasonable or probable cause whatsoever, cause and procure her the said *E. C.* by the name of *E. C.* of *Eastmean*, in the county of S. aforesaid, single woman, to be again falsely indicted, FOR THAT she the said *E. C.* the twentieth day of *September*, in the eighth year of the reign of our said lord the King, with force and arms at *Eastmean* aforesaid,

Indictment
recited.

one

one holland apron of the value of two shillings of the goods and chattels of the said *Jos. W.* then and there being found, then and there feloniously did steal, take, and carry away, against the peace of our said lord the King, his crown and dignity, which said last indictment the said justices of our said lord the King of *Oyer and Terminer*, by their own proper hands afterwards, to wit, at the delivery of the goal of our said lord the King of his said county of *S.* of the prisoners therein being, holden at the castle of *Winton* aforesaid, in and for the same county, on the said sixteenth day of *July*, in the ninth year aforesaid of the reign of our said lord the King, before the said *Philip* Lord *Hardwicke* and Sir *John Fortescue Aland*, justices of our said lord the King, assigned to deliver the goal of the said county of *S.* of the prisoners therein being, did deliver them into court to be determined upon record; and the aforesaid *Jos. W.* and *El.* his wife did prosecute, and cause and procured to be prosecuted, falsely and maliciously, the same last indictment, until afterwards at the same delivery of the goal of our said lord the King of his said county of *S.* of the prisoners therein being, holden at the castle of *Winton* aforesaid, in and for the same county, on the said sixteenth day of *July*, in the ninth year aforesaid of the reign of our said lord the King, before the said justices, the said *El. C.* was in due manner acquitted and discharged of the premises in the said last indictment above charged upon her; and the said *E. C.* doth aver that she the said *Eliz. C.* was not, nor is in any wise guilty of the premises in the said last indictment above laid to her charge.

AND WHEREAS the aforesaid *Jos. W.* and *Eliz.* his wife, of their further malice towards the said *El. C.* afterwards, that is to say, on the said twentieth day of *June*, in the said year of our Lord one thousand seven hundred and thirty five, at *Eastmean* aforesaid, in the county aforesaid, did falsely and maliciously and without any reasonable or probable cause, impose the crime of felony on the said *El. C.* by reason and means of which said several premises the said *El. C.* is not only greatly scandalized and injured in her good name, credit,

credit, and reputation, but also hath been compelled and under a necessity to lay out and expend divers great sums of money in this behalf, and also to undergo great and arduous labours and troubles, as well in body as mind, to wit, at *Eastmean* aforesaid, in the county aforesaid, to the said *E. C.* her damage of one thousand pounds, and thereupon she brings suit, &c. Pledges, &c.

Declaration
against de-
fendant on a
malicious
indictment
at the as-
sises for
charging
plaintiff
with rob-
bing him on
the high-
way.
*Serjeant
Draper.*

Hants, to wit. *Isaac Budd*, late of, &c. was attached to answer *Edward Cornish* of a plea of trespass upon the case, &c. And thereupon the said *Edward C.* by his attorney, complains, THAT WHEREAS the said *Edw. C.* is a good, true, and faithful subject to our Lord the King, and hath always been of good name, fame and credit, and hath always hitherto been so esteemed and reputed, as well amongst his neighbours as other faithful subjects of our said Lord the King, to whom he was known, and hath always hitherto been free and unsuspected of theft, felony, robbery, larceny, and all other like heinous crimes; nevertheless the said *Isaac B.* well knowing the premises, but devising and maliciously intending unjustly to injure the said *Edw. C.* and to hurt and prejudice him in his good name, credit, and reputation, and to bring the said *Edw. C.* not only to the greater scandal, disgrace and infamy, but also to the peril of the loss of his life and the forfeiture of his goods and chattels, lands and tenements, on the fourteenth day of *April*, in the ninth year of the reign of our Sovereign Lord *George* the Second, King of *Great Britain*, &c. at the parish of *Bishop Sutton*, in the county aforesaid, did openly and publicly, falsely and maliciously, charge the said *Edw. C.* with the crime of felony, and did then and there maliciously cause and procure the said *Edw. C.* to be taken and arrested, and to be committed to the common goal of the said city, and there to be imprisoned as a felon for the same; and that the said *Isaac B.* of his further malice, afterwards, at the session of our Lord the King of *Oyer and Terminer*, holden at the castle of *Winton*, in and for the said county of *Southampton*, on *Tuesday* the twenty seventh day of *July*, in the tenth year of the reign of our said Lord the King,

King, before Sir *Law. Carter*, knight, then one of the barons of the Exchequer of our said Lord the King, Sir *Wm. Thompson*, Knt. then another of the Barons of the Exchequer of our said Lord the King, and others their associates then justices of our said Lord the King in that behalf appointed, maliciously caused, and procured the said *Edw. C.* by the name of *Edw. C.* the younger, late of *Bishop Sutton*, in the county of *Southton*, labourer, without any reasonable or probable cause, to be falsely indicted, for that he

Indictment.

the said *Edw. C.* on the tenth day of *April*, in the ninth year of the reign of our said Lord *George* the Second, King of *Great Britain*, &c. with force and arms, at *East Pested*, in the county aforesaid, in and upon the said *Isaac B.* in the peace of God and our King, and in the King's highway, then and there feloniously and violently did make an assault and affray, and him the said *Isaac B.* in bodily fear of his life then and there did put, and one guinea in gold, six shillings in silver, one silver seal value one shilling, and one knife and fork, value three pence, of the goods and chattels of the said *Isaac B.* from the person of the said *Isaac B.* and against the will of the said *Isaac B.* in the King's highway then and there feloniously and violently, did steal, take and carry away, against the peace and the said *Isaac B.* did prosecute, and cause the said of our said Lord the King, his crown and dignity; indictment to be prosecuted against the said *Edward C.* until he afterwards, to wit, at the delivery of the goal of our said Lord the King, of his said county of *Southampton* of the prisoners therein being holden, at the castle of *Winton* aforesaid, in and for the same county, on the twenty seventh day of *July*, in the said tenth year of the reign of our said Lord the King, before the said Sir *Law. Carter* and Sir *Wm. Thompson*, then justices of our said Lord the King assigned to deliver the goal of the said county of *S.* of the prisoners therein being, was duly and according to law and the custom of *England*, (to wit) by a jury of the said county of *S.* upon which he had in that behalf put himself for good and bad, and by the judgment of the same court of goal delivery there acquitted thereof, by reason of

which

which premises the said *Edw. C.* has not only been exposed to great scandal reproach, and shame, and has been greatly hurt and defamed in his credit, character and reputation, but has also undergone a long and grievous imprisonment (to wit) for the space of three months, and has necessarily been put to very great expences and charges in his defence, and for his acquittal aforesaid, and his disgrace of and in the premises, and has also been greatly hindered in transacting his lawful and honest business and affairs, to the damage of the said *Edw. C.* one thousand pounds, and thereupon he brings his suit, &c.

Declaration
for telling a
man he
cheated him
of fourteen
gallons of
wine.

*Serj. Dra-
per.*

Hants Scil. Charles Child complains, of *David Raggett* being in the custody, &c. for this, THAT WHEREAS the said *Ch.* is a good, true, honest, faithful subject of his present Majesty and his predecessors, hath always behaved himself from the time of his nativity hitherto, and during all the time aforesaid hath been of good name, fame, character, and conversation, and free and unsuspected of cheating or defrauding any of his said Majesty's faithful subjects for all the time aforesaid hath lived and remained, by reason whereof he gained the good will and esteem of all his neighbours, and others his said Majesty's faithful subjects.

AND WHEREAS the said *Charles C.* at the time of speaking and publishing the false, feigned, and scandalous words hereafter mentioned, and long before was, and still is, a merchant, residing, inhabiting, and trading at *Gosport*, in the county of *S.* and during all the said time, by reason of his good name, character and reputation in his said trade, gained an honest and comfortable livelihood, provision and maintenance, for himself and his family, by buying, selling, and lawfully and honestly bargaining and dealing in his said trade; yet the said *David R.* not being ignorant of the premises, but envying the happy state of the said *Ch.* and maliciously devising and intending to deprive the said *Ch.* of his good name, fame, character and reputation, and to injure him in his said trade and business, upon the first day of *October*, in the year of our Lord one thousand

thousand seven hundred and thirty five, at *Gosport* aforesaid, in the county of *Southampton*, having discourse with divers of his Majesty's faithful subjects of and concerning the said *Ch.* of and concerning the said trade, then and there falsely, maliciously, openly and publicly, in the presence and hearing of divers of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *Ch.* and of his said trade, these false, feigned and scandalous words following, that is to say, He (meaning the said *Ch.*) hath cheated me (meaning the said *David*) of fourteen gallons of wine out of a pipe of wine that I (meaning the said *David*) bought of him (meaning the said *Ch.*) by ordering his cooper (meaning the said *Ch.*'s cooper) to take out a stave to make it less.

AND the said *David* of his further malice aforesaid, afterwards, to wit, upon the same day and year, at *Gosport* aforesaid, in the county aforesaid, again having discourse with divers other of his said Majesty's subjects of and concerning the said *Ch.* and of and concerning his said trade, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers other of his said Majesty's subjects, spoke, uttered, and with a loud voice pronounced these other false, feigned, and scandalous words following of him the said *Ch.* and of his said trade, that is to say, He (again meaning the said *Ch.*) cheated me (meaning the said *David*) of fourteen gallons of wine out of a pipe of wine that I (meaning the said *David*) bought of him (again meaning the said *Charles*).

AND THAT the said *David* of his further malice aforesaid, afterwards, to wit, on the same day and year, at *Gosport* aforesaid, in the county aforesaid, again having discourse with divers other of his said Majesty's faithful subjects, of and concerning the said *Ch.* and of and concerning his said trade, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers others of his Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published these other false, feigned, and scandalous words following of him the

M

said

DECLARATIONS, PLEADINGS, &c.

said *Charles*, and of his said trade, that is to say, He (meaning the said *Ch.* the now plaintiff) is a vile rascal and a villain; by reason of the speaking and publishing which said false, feigned, and scandalous words of the said *Ch.* he the said *Ch.* is greatly injured in his good name, fame and reputation, and in his trade and business, and hath been obliged to undergo great pains and labour, and to expend and lay out great sums of money for the clearing of his innocence in this behalf, whereby he says he is prejudiced, and hath damage to the value of five hundred pounds, thereupon he brings his suit, &c.

Declaration
for charging
a man with
perjury in
giving evi-
dence in a
cause, and
the whole
proceedings
in that court
recited.

Agar.

Southampton, to wit. *Richard Silvester*, late of, &c. was attached to answer *Paul Dench* of a plea of trespass upon the case; and whereupon the said *Paul D.* by his attorney, complains, THAT WHEREAS he the said *Paul D.* is a good, true, honest and faithful subject of our sovereign lord the now King, and hath always been a person of good name and reputation, conversation and condition, as well amongst his neighbours as other the faithful subjects of our said lord the King, who have known him, and hath also lived free, untainted, and wholly unsuspected of and from all blemish of theft, larceny, robbery, felony and perjury, breach of trust, fraud, falsity, or any other such like wicked crime.

AND WHEREAS one *Henry Read*, gentleman, one of the attorneys of the court of the said lord the King of the Bench here, to wit, at *Westminster*, in the county of *Middlesex*, and in the term of the *Holy Trinity*, in the seventh and eighth years of the reign of the lord *George* the second, now king of *Great Britain*, &c. before Sir *Robert Eyre*, knight, and his companions, justices of the said lord the King, of the Bench aforesaid, did implead one *Henry Budd* of a plea of trespass upon the case, and the said *Henry R.* then declaring against the said *Henry B.* of and in the same plea, in his proper person complained by his declaration therein, THAT WHEREAS he the said *Henry R.* then was a good, true, faithful and honest subject of this kingdom, and as such a good, true, honest subject from the time of his nativity until the

said

said term of the *Holy Trinity* had always behaved and governed himself, and for all the time aforesaid been said, held, esteemed and reputed to be a man of good name, fame, credit and reputation, amongst all his neighbours and other good and faithful subjects of this kingdom, and had always for all his life past to that time had and placed the fear of God before his eyes, and lived and continued free, untouched and unsuspected from all, and all manner of robbery on the highway, foot padding on the highway, felony, theft, robbery, larceny, deceit, or falsehood, or any such hurtful crime, and from all and all manner of suspicion of them or any of them.

AND THAT WHEREAS the said *Henry R.* then was, and at the time of speaking and publishing of the several *English* words after mentioned in the same declaration, and for divers years then last elapsed, had been one of the attorneys of his Majesty's court of the Bench here, to wit, at *Westminster*, in the county of *Middlesex*, and had for all the said time behaved himself well and faithfully in the business of such attorney of the said court, always well and faithfully observing and performing all and all manner of business entrusted with him to be by him transacted in his said business of an attorney of the said court, and had always for all the said time been expert, knowing, and skilful in his said business, by means whereof he the said *Henry R.* had deservedly got and obtained the favour, benevolence, good will, and opinion of all his neighbours and other good and faithful subjects of this kingdom to whom he was known, and also for all the time aforesaid had lawfully and honestly got and obtained divers great profits and gains in his said business as such attorney of divers of his clients in the said court here for transacting their business therein.

AND THAT WHEREAS the said *Henry R.* before and at the time of the speaking of the several *English* words after fifthly, sixthly and eighthly, mentioned in his said declaration, was remorant in *London* of several businesses of great importance, but was also tenant and possessor of a certain messuage situate and being at *Abersford*, in the county of *Southampton* aforesaid, furnished

nished and adorned with divers goods and chattels of the said *Henry R.* which said goods and chattels in the absence of the said *Henry R.* had been lately seized and distrained in the said house for rent due, or pretended to be due from the said *Henry R.* for the said house, and the said *Henry R.* in order to redeem his said goods and chattels from the said distress, had then lately sent down from *London* to *Abersford* aforesaid, twenty guineas of lawful *British* money, and had thereby redeemed his said goods and chattels from the said distress, yet the said *Henry B.* knowing all and singular the said premises abovementioned in the said declaration, and envying the happy state and condition of the said *Henry R.* and contriving and maliciously intending not only to prejudice and damnify the said *Henry R.* in his good name, fame, credit and reputation, and to hurt and prejudice him in his said business, but also to bring him into and subject him to the pains and penalties by the laws and statutes of *England* made and provided against thieves, highwaymen and robbers, on the tenth day of *January*, in the year of our Lord one thousand seven hundred and thirty three, at *Abersford* aforesaid, in a certain discourse that the said *Henry B.* then and there had with divers subjects of his kingdom of and concerning the said *Henry R.* he the said *Henry B.* falsely and maliciously said, rehearsed, proclaimed, and spoke openly in the presence and hearing of those subjects these false, feigned, scandalous and opprobrious words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) keeps a fine mare in *London*, and robs on the highway with her.

And afterwards, that is to say, the same day and year, at *Abersford* aforesaid, in certain other discourses that the said *Henry B.* then and there had with divers others subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* falsely and maliciously said, rehearsed, proclaimed and spoke openly in the presence and hearing of those subjects last mentioned, these other false, feigned and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) is a highwayman.

And afterwards, to wit, the same day and year, at *Abersford* aforesaid, in a certain other discourse that

that the said *Henry B.* then and there had with divers other worthy subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly in the presence and hearing of those subjects last mentioned, these other false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) gets money by robbing on the highway.

And afterwards, that is to say, the same day and year, at *Abersford* aforesaid, in a certain other discourse that the said *Henry B.* then and there had with divers other subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly, in the presence and hearing of those subjects last mentioned, these other false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) robs on the highway for money.

And afterwards, that is to say, the same day and year, at *Abersford* aforesaid, in a certain other discourse that the said *Henry B.* then and there had with divers other subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly in the presence and hearing of those subjects last mentioned, these other false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry B.*) would not have got the twenty guineas he (also meaning the said *Henry R.*) sent into the country (meaning to *Abersford* aforesaid) to pay his rent when his goods (meaning the goods of the said *Henry R.*) were distrained, if he (meaning the said *Henry R.* had not robbed on the highway for them (meaning for the said twenty guineas.)

And afterwards, that is to say, the same day and year, at *Abersford* aforesaid, in a certain other discourse that the said *Henry B.* then and there had with divers other subjects of this kingdom of and concerning

ing the said *Henry R.* he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly, in the presence and hearing of those subjects last mentioned, these other false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) got the twenty guineas he (also meaning the said *Henry R.*) sent into the country (meaning to *Abersford* aforesaid) to pay his rent when his goods (meaning the goods of the said *Henry R.*) were distrained, by robbing on the highway for them (meaning the said last mentioned twenty guineas.)

And afterwards, that is to say the same day and year, at *Abersford* aforesaid, in a certain other discourse that the said *Henry B.* then and there had with divers other subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* then and there maliciously said, rehearsed, proclaimed and spoke openly in the presence and hearing of those subjects last mentioned, these other false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) is a thief.

And afterwards, that is to say, the same day and year, at *Abersford* aforesaid, in a certain other discourse that the said *Henry B.* then and there had with divers other worthy subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly, in the presence and hearing of those subjects last mentioned, these false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) is run away for debt, and will never come to *Abersford* (meaning to *Abersford* aforesaid) again.

And afterwards, that is to say, the same day and year, at *A.* aforesaid, in a certain other discourse that the said *Henry B.* had then and there with divers other subjects of this kingdom of and concerning the said *Henry R.* he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly, in the presence and hearing of those subjects

jects last mentioned, these false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* to wit, He (meaning the said *Henry R.*) is a rogue and a cheat, and is undone, and can never pay his debts.

And afterwards, that is to say, the same day and year, at *Abersford* aforesaid, in a certain other discourse that the said *Henry B.* then and there had with divers other subjects of this kingdom of and concerning the said *Henry R.* in his aforesaid *business*, he the said *Henry B.* then and there falsely and maliciously said, rehearsed, proclaimed and spoke openly in the presence and hearing of those subjects last mentioned, these other false, feigned, scandalous and opprobrious *English* words of the said *Henry R.* in his said *business*, to wit, He (meaning the said *Henry R.*) is an ignorant fellow in his business, and knows nothing of it, and is a great rogue, by means of speaking and publishing of which several false, feigned, scandalous and opprobrious words, the said *Henry R.* was not only scandalized and degraded of his good name, fame, credit and reputation, and taken, esteemed and reputed to be a thief, and highwayman, but also was greatly injured, damnified and prejudiced in his business aforesaid as an attorney of the said court, and divers subjects of this kingdom his clients, who used and would have employed him as their attorney, had refused to employ him or any otherwise to deal with him, and did more and more refuse, to the said *Henry R.* his damage of one thousand pounds, and therefore he brought this suit; and the said *Henry B.* by *Henry W.* came and defended the force and injury so set forth, and said that he was not guilty of the premises above laid to his charge as the said *Henry R.* had complained against him, and of that he put himself upon the country, and the said *Henry R.* likewise.

The plea
recited.

AND WHEREAS the aforesaid issue so joined between the said *Henry R.* and *Henry B.* as aforesaid, afterwards, to wit, at the assizes held at the *Castle* of *Winton*, in the aforesaid county of *S.* on *Friday* the seventeenth day of *July*, in the eighth year of the reign of our said lord the now King, came on to be tried,

tried, and was tried before Sir *Law. Carter*, knight, one of the barons of the Exchequer of the said lord the King, and Sir *Wm. Thompson*, knight, another of the barons of the Exchequer of the said lord the King, assigned to take the assizes for the county of *S.* aforesaid, by a certain jury of the aforesaid county of *S.* to wit, (*reciting the jury and the said Rich. Silvester*) the jurors then and there sworn and charged upon oath to try the issue, and the jurors aforesaid did give a verdict for the said *Henry R.* against the said *Henry B.* to wit, that the said *Henry B.* was guilty of the premises specified in the aforesaid declaration of the said *Henry R.* as the said *Henry* complained against the said *Henry B.* and assessed the damages of him the said *Henry R.* by means thereof, besides his costs and charges to forty shillings.

AND WHEREAS at and upon the said trial of the issue aforesaid, to wit, the day and year last abovementioned, at the aforesaid Castle of *Winton*, the said *Paul Dench* was produced as a witness on the part of the said *Henry R.* in the cause aforesaid, to testify and speak the truth concerning the matter then in question, and then and there in the same court was sworn upon the holy evangelists the truth, the whole truth, and nothing but the truth, of and concerning the premises in the issue aforesaid, and the said *Paul Dench* then and there upon his said oath did give his evidence to the said jurors of the jury aforesaid of and concerning the premises in the said issue aforesaid, and then and there upon his said oath did say and depose, that the said *Henry B.* did say of the said *Henry R.* that he kept a fine mare in *London*, and robbed on the highway with her, and that the said *Henry R.* could not have got the twenty guineas he sent into the country to pay his rent when his goods were distrained, if he had not robbed on the highway for them.

AND WHEREAS the said *Paul Dench* did then and there speak and depose the truth, the whole truth, and nothing but the truth in his said evidence, nevertheless the said *Rich. Silvester*, well knowing the premises, contriving and maliciously intending unjustly to grieve him the said *Paul Dench*, and to hurt
and

and detract and prejudice his good name, fame, credit, and reputation aforesaid, to bring him the said *Paul Dench* into public scandal, ignominy, disgrace and infamy, and to cause him to incur and undergo the pains and penalties provided against those who commit wilful and corrupt perjury, soon after the trial of the issue aforesaid, to wit, the nineteenth day of *July*, in the eighth year aforesaid, at *Winton* aforesaid, the said *Rich. Silvester* being then and there asked by one *Thomas Marshal*, who had heard the trial of the issue aforesaid, how he the said *Rich. Silvester* could in his conscience justify the giving the said *Henry R.* only forty shillings damages? to which *Thomas M.* the said *Rich. Silvester* thereupon answering, did openly and publicly speak, utter and publish of the said *Paul Dench*, in the presence and hearing of divers subjects of the said now King, certain false and scandalous words, to wit, *Paul Dench* (meaning the aforesaid *Paul Dench*) is a rogue for swearing what he did in the cause (meaning the aforesaid trial of the said issue between the said *H. R.* and *H. B.*) he (again meaning the said *Paul D.*) is a rogue and a villain, and a bigger rogue than any that robs on the highway, and what he (again meaning the said *Paul Dench*) swore (meaning the aforesaid evidence which the said *Paul Dench* had so given and deposed upon the said trial as aforesaid) was to get one thousand pounds (meaning the aforesaid one thousand pounds whereof the said *Henry R.* in his said declaration above-mentioned complained that he was damnified) or what sum he (meaning the said *Paul Dench*) could, and then share it between *R.* (meaning the aforesaid *Henry R.*) and himself (meaning the said *Paul Dench*); he (again meaning the said *Paul Dench*) is a villain for taking notice of what *B.* (meaning the aforesaid *Henry B.*) said of *R.* (meaning the aforesaid scandalous words which the said *Paul Dench* in his evidence upon the said trial of the issue aforesaid, had deposed to have been spoken by the said *Henry B.* of the said *Henry R.*) by means of the speaking, uttering, and publishing the said several false, feigned, scandalous and defaming words
by

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by the said *Rich. Silvester* of the said *Paul Dench*, he is not only greatly hurt and prejudiced in his good name, fame and reputation aforesaid, but is also greatly hindered in the doing and performing of his lawful affairs and business, to the damage of the said *Paul Dench* of five hundred pounds; therefore he brings this suit, &c.

Declaration
for charging
a wife with
felony.

Warren.

Suffex, to wit. *Richard Vigor* and *Elizabeth* his wife complain of *James Duffield*, being in the custody, &c. FOR THAT WHEREAS the said *Eliz.* is a good, true, faithful and honest subject of this kingdom, and as such good, true, faithful and honest subject hath always from the time of her nativity hitherto carried, governed and behaved herself, and has for all the time aforesaid been taken and reputed by all her neighbours and other worthy subjects of this kingdom to be a woman of good name, fame and credit, reputation, behaviour and conversation, and has for her life time hitherto lived and continued free, clear, innocent and wholly unsuspected of and from all manner of fraud, felony, robbery, larceny, and every other such hurtful crime, by means whereof the said *Eliz.* before the speaking and publishing of the scandalous and defamatory words hereinafter mentioned, had deservedly obtained and acquired to herself the favour, benevolence, respect and good opinion of all her friends and acquaintances, and other worthy subjects of this kingdom to whom she was known; yet the said *James* very well knowing the premises, but contriving and maliciously intending not only to hurt, injure, degrade and damnify the said *Eliz.* in her good name, fame, credit and reputation, but also wrongfully to subject her to the punishments, pains and penalties by the laws and statutes of this realm made and provided against thieves and robbers, on the nineteenth day of *March*, in the year of our Lord one thousand seven hundred and thirty four, at *Petworth*, in the county aforesaid, in a certain discourse that the said *James* then and there had with the said *Eliz.* of and concerning the said *Eliz.* in the presence and hearing of divers worthy subjects of this kingdom, he the said *James* then and there falsely and maliciously said, rehearsed, proclaimed

claimed openly, and loudly published these false, feigned, scandalous and opprobrious *English* words following of the said *Eliz.* in the presence and hearing of those subjects, to wit, you (meaning the said *Eliz.*) are a thief, and stole six half ankers of brandy from me (meaning the said *James*) and I (meaning the said *James*) can prove it.

AND afterwards, the same day and year, at *Petworth* aforesaid, in the county aforesaid, in a certain other discourse that the said *James* then and there had with the said *Eliz.* of and concerning the said *Eliz.* in the presence and hearing of divers other worthy subjects of this kingdom, he the said *James* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these other false, feigned, scandalous and opprobrious *English* words following of the said *Eliz.* in the presence and hearing of those subjects last mentioned, to wit, you (meaning the said *Eliz.*) stole six half ankers from me (meaning the said *James*) and I (meaning the said *James*) will prove it

AND afterwards, the same day and year aforesaid, at *Petworth* aforesaid, in the county aforesaid, in a certain other divers discourse that the said *James* then and there had with the said *Eliz.* of and concerning the said *Eliz.* in the presence and hearing of divers worthy subjects of this kingdom, he the said *James* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these other false, feigned, scandalous and opprobrious *English* words following of the said *Eliz.* in the presence and hearing of those subjects last mentioned, to wit, you (meaning the said *Eliz.*) have stole my brandy (meaning the brandy of the said *James*) from me (meaning the said *James*) and I (meaning the said *James*) will prove it; by reason of speaking and publishing of which said false, scandalous words, she the said *Eliz.* is hurt, injured, degraded and dammed in her good name, fame, credit, reputation and esteem, and is fallen into public scandal, infamy and disgrace amongst all her neighbours and other good and worthy subjects of this kingdom, insomuch that divers of those neighbours and subjects to whom the
inno-

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innocence and integrity of the said *Eliz.* in the premises were unknown, have always from the time of speaking and publishing the said words so vehemently suspected the said *Eliz.* to have been a thief, that on that account they have always from thence afterwards hitherto wholly refused, and still do daily more and more refuse to have any commerce or discourse with her, or to have any thing to do with her as before they were used and accustomed to have with the said *Richard* and *Eliz.* their damage of two hundred pounds, and therefore they bring this suit, &c—Pledges, &c.

Declaration
for a malicious
indictment in
charging
plaintiff with
stealing pigs,
which he
bought of
defendant.
*Serj. Dra-
per.*

To wit. *Henry Rooke* complains of *Richard Toomer* in the custody, &c. FOR THAT WHEREAS the said *Hen.* is a good, true and faithful, and honest subject of our sovereign lord the present King, and as such hath always from his birth hitherto behaved and demeaned himself, and always hath been held, esteemed, reputed and taken to be of good name, fame, credit, and reputation among all his neighbours and other faithful subjects of the said lord the King and his predecessors, and hath always hitherto lived free and unblemished from and with, and wholly unsuspected of all kinds of theft, felony, fraud, deceit, cheating, and other such heinous crimes, by reason whereof he most deservedly gained the good will and esteem of all his neighbours, and others to whom he was known.

AND WHEREAS the said *Hen.* in his own right, and one *Wm. Plumby*, and one *Roger Plumby*, as servants of the said *Hen.* and by his order, upon the twenty fifth day of *September*, in the ninth year of the reign of our said lord the now King, at in the county of *Southampton*, took and drove three pigs of the said *Henry* then found there, the said *Rich. T.* well knowing the premises, but devising and maliciously intending to hurt and prejudice the said *Hen.* in his good name, fame and reputation, and unjustly to oppress, harass and impoverish him, under colour of process of law, and put him in danger of undergoing corporal punishment, and of forfeiting all his goods and chattels,

chattels, afterwards, to wit, at the sessions of the said lord the King of *Oyer and Terminer*, held at the *Castle of Winton* in and for the said county, on *Wednesday* the thirtieth day of *March*, in the ninth year aforesaid, before *James Reynolds*, Esq; then lord chief baron of his Majesty's court of Exchequer, and Sir *Francis Page*, knight, then one of the justices appointed to hold pleas before the King himself, and others their associates, then justices of the said lord the King, in that behalf assigned, maliciously, under the pretence and colour aforesaid, caused and procured the said *Hen.* by the name of &c. together with the said *Wm. P.* and *Roger P.* to be falsely indicted, for that they the said *Wm. Roger* and *Hen.* upon the twenty fifth day of *September*, in the ninth, &c. (*reciting the indictment*) which said indictment the justices last above-mentioned, by their own proper hands afterwards, to wit, at the delivery of the goal of the said lord the King of his said county of *S.* of the prisoners therein being, holden at the *Castle of Winton* aforesaid in and for the said county, on the said third day of *March*, in the ninth year aforesaid, before the said *James Reynolds* and Sir *Francis Page*, then justices of our said lord the King assigned to deliver the goal of the said county of the prisoners therein being, did deliver into court to be determined upon record, and the said *Rich.* thereupon further maliciously and unjustly prosecuted the said indictment against the said *Wm. Roger* and *Hen.* until afterwards, to wit, at the then next delivery of the goal of the said lord the King, holden at the *Castle of Winton* aforesaid in and for the said county, on *Tuesday* the twenty seventh day of *July*, in the tenth year of the reign of our said lord the King, before Sir *Law. Carter*, knt. one of the then barons of the Exchequer of our said lord the King, and Sir *Wm. Thompson*, knight, then another of the barons of the same court, then justices of our said lord the King assigned to deliver the goal of the said county of prisoners therein being, they the said *Wm. P. Roger P.* and *Hen. R.* were, and each of them was by a jury of the county, and by judgment of the same court acquitted and discharged

charged of and from the premises above charged upon them by the said indictment, by reason of which said false and malicious charge and prosecution he the said *Hen.* hath not only been greatly injured and scandalized in his good name, fame and reputation, but hath also been obliged to undergo great labour and trouble in clearing his innocence in this behalf, and hath also been obliged to lay out and expend, and hath expended a very large sum of money, to wit, the sum of two hundred pounds, in and about the defence of himself and his said servants against the said false and malicious charge and prosecution of the said *Richard.*

AND the said *Hen.* further saith that the said *Rich.* further devising, and maliciously intending to hurt and prejudice the said *Hen.* in his good name, fame and reputation, and unjustly to oppress, harass and impoverish him under colour of process of law, and put him in danger of undergoing corporal punishment, and of forfeiting all his goods and chattels, afterwards, to wit, upon the third day of *March*, in the ninth year aforesaid, at aforesaid, falsely and maliciously charged the said *Hen.* with another crime of felony, viz. in feloniously stealing and taking, and driving away three other pigs, he the said *Rich.* then and there falsely and maliciously alledging and pretending that the said three pigs last mentioned then and there were the proper goods and chattels of the said *Richard*, and the said *Rich.* under pretence and colour of the said false and malicious charge last abovementioned, afterwards, to wit, at the sessions of the said lord the King of *Oyer and Terminer*, held at the *Castle of Winton* in and for the county aforesaid, on *Wednesday* the third day of *March*, in the ninth year of the reign of our said lord the King, before *James Reynolds, Esq;* the lord chief baron of his said Majesty's court of Exchequer, and *Sir Fra. Page*, knight, then one of the justices appointed to hold pleas before the King himself, and other their associates, then justices of our said lord the King in that behalf assigned, falsely and maliciously, under the pretence and colour last aforesaid, caused and procured the said *Hen.* by the name of, &c. together with

with one *Wm. P.* of, &c. and *Roger P.* of &c. to be falsely indicted, for that the said *Wm. Roger* and *Hen.* &c. (*reciting the indictment*) which said indictment last above mentioned the said justices last above named, by their own proper hands afterwards, to wit, at the delivery of the goal of the said lord the King of his said county of *S.* of the prisoners therein being, holden at the *Castle of Winton* aforesaid in and for the said county, on the said third day of *March*, in the ninth year aforesaid, before the said *James Reynolds* and Sir *Fra. Page*, then justices of the said lord the King assigned to deliver the goal of the said county of the prisoners therein being, did deliver then into court to be determined upon record; and the said *Rich.* thereupon further unjustly and maliciously prosecuted the said indictment last abovementioned against the said *Hen.* until afterwards, to wit, at the delivery of the goal of our said lord the King, holden at the *Castle of Winton* aforesaid in and for the said county, afterwards, to wit, on *Tuesday* the twenty seventh day of *July* in the tenth year of the reign of our said lord the King, before Sir *Law. Carter*, knt. then one of the barons of the Exchequer of our said lord the King, and Sir *Wm. Thompson*, knight, then another of the barons of the same court, then justices of our said lord the King assigned to deliver the goal of the said county of the prisoners therein being, he the said *Hen.* was in due manner, and according to the law and custom of *England* acquitted of the premises above charged upon him by the indictment last abovementioned by a jury of this county and by the judgment of the same court, by reason of which unjust and malicious charge and prosecution last abovementioned the said *Hen.* is not only greatly scandalized and damaged in his good name, fame and reputation, but hath been compelled to undergo great labour and troubles, and to expend divers other great sums of money, to wit, other two hundred pounds in and about his defence and clearing his innocence in this behalf; and the said *Hen.* further saith that the said *Rich.* further devising and maliciously intending to hurt and prejudice the said *Hen.* in his good name, fame and reputation, and unjustly,

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to oppress, harrafs and impoverish him, under colour of process of law, afterwards, to wit, at the said session of the said lord the King, of *Oyer and Terminer* held at the *Castle of Winton* in and for the said county, on *Wednesday* the third day of *March*, in the ninth year aforesaid, before the said *James Reynolds*, Esq; then lord chief baron of his Majesty's court of Exchequer, and the said Sir *Fra. Page*, knight, then one of the justices appointed to hold pleas before the King himself, *Christopher Hawkins*, Esq; and others their associates, then justices of the said lord the King in that behalf assigned, maliciously caused and procured the said *Hen.* by the name of, &c. together with one *Edward Holmes* and *Roger Wilkins* to be falsely indicted, for that the said *Henry*, *Edward* and *Roger*, &c. (*reciting the indictment*) and the said *Rich.* thereupon further unjustly and maliciously prosecuted the said indictment last abovementioned against the said *Hen.* until afterwards, to wit, at the sessions of our said lord the King, of *Oyer and Terminer* held at the castle of *Winton* aforesaid in and for the said county, on *Tuesday* the twenty seventh day of *July*, in the tenth year of the reign of our said lord the King, before Sir *Law. Carter*, knight, then one of the barons of the Exchequer of our said lord the King, and Sir *Wm. Thompson*, knight, then another of the barons of the same court, *Christopher Hawkins*, Esq; and others their associates, then justices of our said lord the King in that behalf assigned, he the said *Henry* was in due manner, and according to the law and custom of *England* acquitted of the premises above charged upon him by the indictment last above mentioned by a jury of this county, and by the judgment of the same court, by reason of which false, unjust and malicious prosecution last abovementioned, the said *Hen.* is not only greatly scandalized and damaged in his good name, fame and reputation, but hath been compelled to undergo great labours and troubles, and to expend divers other great sums of money in and about his defence, and clearing his innocence in this behalf, whereof

whereby he says he is prejudiced, and hath damage to the value of five hundred pounds, and thereupon he brings his suit, &c.

To wit, *Thomas Cornelius*, gent. complains of *John Ballard*, &c. FOR THAT WHEREAS the said *Thomas* is a good, true, faithful and honest subject of this realm, and as such from the time of his birth hath behaved and governed himself, and hath been reputed, had and taken to be of good name, fame, credit and reputation towards all his neighbours and other worthy subjects of this realm to whom he was known, and hath lived and continued during his whole life past free, innocent and altogether unsuspected of being guilty of any kind of perjury, false swearing, forswearing, or of any other deceit, fraud, falsity, or even the suspicion of them or any of them.

Declaration
charging a
man with
voting twice
at an electi-
on.
Serj. Bootle.

AND WHEREAS on the eighteenth day of *April*, in the seventh year of the reign of his present Majesty, a certain writ of his said Majesty issued out of his said Majesty's court of *Chancery* then being at *Westminster*, in the county of *Middlesex*, directed to the then sheriff of the county of *Southampton* aforesaid, by which said writ his said Majesty reciting, THAT WHEREAS by the advice and assent of his counsel for certain arduous and urgent affairs touching his said Majesty, the state and defence of his kingdom of *Great Britain* and the Church, his said Majesty had ordered a certain parliament to be holden at his city of *Westminster* the thirteenth day of *June* then next ensuing, there to treat and have conference with the prelates, great men and peers of this realm, his said majesty by the said writ did command and strictly enjoin the said sheriff that proclamation being made in the said sheriff's next county court after the reception of that his said Majesty's writ to be holden of the day and place aforesaid, two knights girt with swords of the most fit and discreet of the said county, and of every city of that county two citizens, and of every borough two burgeses of the most discreet and sufficient, freely

N

and

and indifferently by them who at such proclamation should be present, the said sheriff should cause to be elected according to the form of the statute in that case made and provided, and the names of such knights, citizens and burgeses so elected in certain indentures thereupon to be made between the said sheriff and them who should be present at such election to be inserted (whether the persons so elected should be present or absent) and then at the said day and place should cause to come in such manner that the said knights full and sufficient power for themselves and the commonalty of the same county, and the said citizens and burgeses for themselves and the commonalty of the said cities and boroughs, severally from them might have to do and consent to those things which then and there, by the common council of his said Majesty's kingdom (with God's assistance) should happen to be ordained upon the affairs aforesaid, so that through defect of such power or by an improvident election of such knights, citizens and burgeses, the said affairs might not in any wise remain unprovided for, willing nevertheless, that neither the said sheriff nor any other sheriff of this his Majesty's kingdom aforesaid in any wise should be elected, and the said election in the said sheriff's full county so made distinctly and openly under the seal of the said sheriff and the seals of them who were present at such election, the same sheriff should certify unto his said Majesty in his court of *Chancery* at the day and place aforesaid without delay, remitting to him one part of the aforesaid indentures sewed to the said writ, together with the said writ, as by the said writ now remaining affixed in his said Majesty's court of *Chancery* of record at *Westminster* aforesaid it doth more fully appear, which said writ afterwards and before the return thereof, to wit, on the twenty second day of *April*, in the said seventh year of the reign of his said present Majesty at *Winchester*, in the county aforesaid was delivered to one *Richard Fervoise*, Esq; then and there and until and after the return of the same writ, being sheriff of the county of *S.* aforesaid, to be

be executed in due form of law, by virtue of which said writ afterwards and before the return thereof, that is to say, on *Wednesday*, the eighth day of *May*, in the said seventh year of his said Majesty's reign, at *Winchester* aforesaid, at the next county court of him the said *Richard Jervoise*, sheriff of the same county, after the receipt of the same writ held the same day and place for the same county of *S.* before the same *Richard Jervoise* then sheriff of the county of *S.* aforesaid, in his full county, the same sheriff did cause the aforesaid writ to be read, and public proclamation to be made of the said day and place of the said parliament as aforesaid to be held according to the exigency of that writ, whereupon then and there in the same full county it was proceeded to an election of knights of parliament for the same county of *S.* to come to the said parliament so as aforesaid to be held, according to the form and effect of the aforesaid writ; and thereupon the Right Honourable *Henry Powlett*, Esq; commonly called Lord *Henry Powlett*, *Anthony Chute*, Esq; Sir *Simon Stuart*, baronet, and *Edward Lisle*, Esq; then and there were and stood candidates at that election, that out of them two might be elected knights for the county of *S.* aforesaid, to serve in the said parliament so as aforesaid to be held; and several freeholders of the same county of *S.* residing in the same county and present at that election, and having votes in that behalf, then and there gave their votes for the said Lord *Henry P.* and *Anthony Chute*, to be knights in that parliament for the said county of *S.* and several other freeholders of the same county, and residing there and likewise present at that election, voted for the said Sir *Simon Stuart* and *Edward Lisle* to be knights of the said county of *S.* and because that election could not be determined upon the view with the consent of the freeholders then there present, but that a poll was then and there required for the determination thereof, the aforesaid *Richard Jervoise*, then sheriff of the said county of *S.* then and there forthwith proceeded to take

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the said poll in a certain open and public place at *Winchester* aforesaid, by the said sheriff then and there appointed for that purpose, which said poll was taken there at and in several waggons then and there appointed by the said sheriff for that purpose, by several clerks appointed and sworn by the said sheriff for that purpose, in the presence of the said sheriff, according to the form of the statute in that case lately made and provided, at which said election so as aforesaid had and made, he the said *Thomas Cornelius* being then a freeholder of the said county of *S.* and then and there at the said election present, and having a vote in that behalf, then and there, at one of the said waggons there so appointed for that purpose, before *Thomas Hayham* and *Daniel Call*, two of the said sworn clerks so as aforesaid appointed for taking the poll, polled and gave his vote for the said Lord *Henry P.* and *Anthony Chute* to be knights in that parliament for the said county of *S.* but before the said *Thomas C.* was admitted to poll at the said election as aforesaid, being required by the said candidates according to the form of the statute in that case lately made and provided, did then and there first take the oath mentioned and directed in and by the statute aforesaid in that case by him as a freeholder to be taken before the said *Thomas Hayham*, and *Daniel Call*, two of the said sworn clerks by the said sheriff so as aforesaid appointed for taking the said poll as aforesaid (they the said *Thomas Hayham*, and *Daniel Call*, then and there having sufficient authority to administer the said oath to the said *Thomas C.* in that behalf) by which said oath the said *Thomas C.* amongst other things then and there swore, that he had not been before polled at that election, and the said *Thomas C.* did not poll or give his vote at any other time, or at any other waggon, or for any other persons than at the said one single time and place, in manner and form as is above set forth in and during the whole election aforesaid, so as aforesaid had and made, nevertheless the aforesaid *John Ballard*, not ignorant of the premises, but contriving and fraudulently intending the said

said *Thomas C.* in his good name, credit and reputation to hurt and injure, and to cause him the said *Thomas C.* to be esteemed and reputed a person perjured and forsworn, and also to bring him into danger of suffering the pains and penalties of the laws and statutes of this realm made and provided against persons guilty of wilful perjury, on the eleventh day of *May*, in the said seventh year of his said present Majesty's reign, at *Rumsey*, in the county of *S.* aforesaid, in a certain discourse which the said *John Ballard* then and there had with divers of his said Majesty's faithful servants of and concerning the said election for the county aforesaid, and of and concerning him the said *Thomas C.* polling and giving his vote in the said election, did falsely and maliciously, openly and publicly say, relate and publish of the said *Thomas C.* in the presence and hearing of his said Majesty's subjects, these false, feigned, scandalous and opprobrious words, to wit, *Mr. C.* (meaning the said *Thomas C.*) did take the poll twice, was sworn at two waggons at the election of knights of the shire at *Winchester* (meaning the said election for the said county of *S.* so as aforesaid had) and was forsworn, and I (meaning the said *John Ballard*) will bring two witnesses to swear it.

AND ALSO afterwards, that is to say, the same day and year at *Rumsey* aforesaid, in the county aforesaid, in a certain other discourse which the said *John Ballard* then and there had with divers others of his said Majesty's faithful subjects of and concerning the said election for the county aforesaid, and of and concerning him the said *Thomas C.* polling and giving his vote in the said election, did falsely and maliciously, openly and publicly say, relate and publish of the said *Thomas C.* in the presence and hearing of his said Majesty's subjects last mentioned, these other false, feigned, scandalous and opprobrious words, to wit, *Mr. C.* (meaning again the said *Thomas C.*) had taken the poll twice, was sworn at two waggons at the election of knights of the shire at *Winchester* (meaning again the said election for the said county of *S.* so as aforesaid had) and was forsworn, and I (meaning again

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again the said *John Ballard*) will bring two witnesses to swear it.

AND ALSO afterwards (*reciting the second count over again with these words*) to wit, Mr. *Thomas C.* (meaning again the said *Thomas C.*) did take the poll twice, was sworn at two waggons at the election of knights of the shire at *Winchester* (meaning again the said election for the said county of *S.* so as aforesaid had) and was forsworn, and I (meaning again the said *John Ballard*) will bring two witnesses to swear it.

AND ALSO afterwards, &c. (*reciting the second count over again and these words*) to wit, Mr. *C.* meaning again the said *Thomas C.*) polled twice, was sworn at two waggons at the election of knights of the shire at *Winchester* (meaning again the said election of the said county of *S.* so as aforesaid had) was forsworn, and I (meaning again the said *John Ballard*) will bring two witnesses to swear it; whereas in fact he the said *T. C.* polled only once at the said election for knights for the said county of *S.* as aforesaid, and was only sworn at one of the said waggons then as aforesaid, and is not, nor was guilty of any perjury, or of forswearing himself at the said election, or elsewhere in any wise whatsoever, as is above falsely and maliciously charged upon him, by reason of speaking and publishing of which said scandalous and opprobrious words, the said *Thomas C.* is greatly scandalized, injured and hurt in his good name, fame, credit and reputation aforesaid, and is fallen into such scandal and infamy amongst several of his neighbours and others his Majesty's subjects, that divers of them suspect the said *Thomas C.* to be guilty of perjury and forswearing himself at the said election, to the damage of the said *Thomas C.* five hundred pounds, whereupon he bringeth suit, &c.

N. B. Lord Hardwicke said that the above declaration was too special.

Declaration for charging plaintiff with perjury. To wit, *John Farmin* complains of *Thomas Russell*, &c. FOR THAT WHEREAS the said *John* now is a good, &c. (*as in the above declaration.*)

AND

AND WHEREAS the said *John* now is, and at the time of speaking and publishing of the several false, feigned and scandalous words hereafter mentioned, and for divers, to wit, three years then last past was a butcher, and hath for all the time aforesaid honestly exercised and followed the trade and business of a butcher, by means of which said premises, he the said *John*, before the speaking and publishing of the said several scandalous and opprobrious words hereafter mentioned, had deservedly obtained and acquired to himself not only the benevolence, good opinion and credit of his said neighbours and acquaintance and other good worthy subjects of this realm, and daily got great sums of money in his said business lawfully and honestly, to the comfortable support of himself and increase of his riches, but also by reason thereof one *Elizabeth Headly*, a widow, being a woman sole and unmarried, and a woman that was possessed of divers great sums of money and riches as her own goods and chattels, bore and had very great love, affection and favour towards him, and greatly coveted and desired to take the said *John* to husband, and to be joined to him in lawful matrimony, he the said *John* being then and yet also a single man and unmarried, whereupon the said *John* also mightily desired and coveted to contract and solemnize matrimony with the said *Elizabeth H.* and divers discourses and meetings were had between the said *John* and *Eliz. H.* for the execution, conclusion and consummation of that marriage between the said *John* and *Eliz. H.* insomuch, that by these discourses and meetings a marriage between them the said *John* and *Eliz. H.* was very likely to be concluded and consummated, and was almost entirely agreed upon and concluded, and the said *John* by reason thereof was very likely to possess and enjoy great riches and happiness, and to be placed and preferred to a happy state of life.

AND WHEREAS a certain issue joined between *John Doe* and *Thomas Russel* and *Eliz.* his wife, in a plea of trespass and ejectment in the court of the said lord the now King, before the said King here,

ry in giving evidence in a cause, whereby a rich lady, having before that charge contracted marriage with plaintiff, refused to marry him.

Warren.

here, to wit, at *Westminster*, in the *Hilary* term, in the sixth year of his said Majesty's reign, was tried at the assizes held in and for the county of *Suffex* aforesaid, at _____ in the county of _____ aforesaid, on the twelfth day of *March*, in the sixth year of his said Majesty's reign, by a certain jury for that county, before *James Reynolds*, Esq; then his said Majesty's justice assigned to take the assizes in the county of *Suffex* aforesaid, and the said *John* at the trial of the issue being sworn upon the Holy Evangelists of God in due form of law before the said justice at the said assizes, then and there testified and gave in evidence to the said jury all and singular those things, which according to his knowledge he knows to be true touching the matter in dispute upon that issue between the said parties, and then and there said, deposed and gave in evidence to the said jury the truth and nothing but the truth, yet the said *Thomas* now defendant, very well knowing all and singular the premises, and greatly envying the happy state and condition of the said *John*, and maliciously contriving and intending not only to injure, prejudice, degrade and damnify him the said *John* in his good name, fame, credit, reputation and business aforesaid, to cause him to fall into disgrace and infamy amongst all his neighbours and other good and faithful subjects of this kingdom, and wholly to break off and frustrate the said marriage between them the said *Eliz. H.* and *John*, and to hinder the same from taking effect, and altogether to deprive and hinder the said *John* of his happy state to be by him received and had by that marriage, but also to put the said *John* in peril of undergoing the punishments, pains and penalties of the laws and statutes of this realm, made and provided against those who commit perjury, on the first day of *December*, in the year of our Lord one thousand seven hundred and thirty three, at _____ in the county of *Suffex* aforesaid, in a certain discourse that the said *Thomas* now defendant then and there had with divers worthy subjects of this realm of and concerning the said *John*, and of and concerning _____

concerning the said trial of the said issue so as aforesaid joined, and the said evidence so as aforesaid given by the said *John* at and upon the said trial of the said issue, he the said *Thomas* now defendant, then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these false, feigned, scandalous and opprobrious words following of the said *John*, in the presence and hearing of those subjects, to wit, he (meaning the said *John*) forswore himself at the trial of that cause (meaning at the said trial of the said issue abovementioned).

AND afterwards the same day and year last aforesaid, at aforesaid, in the county of *Suffex* aforesaid, in a certain other discourse that the said *Thomas* now defendant then and there had with divers other worthy subjects of this realm of and concerning the said *John*, and of and concerning the said trial of the said issue so as aforesaid joined, and the said evidence so as aforesaid given by the said *John* at and upon the said trial of the issue, he the said *Thomas* now defendant then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these other false, feigned, scandalous and opprobrious English words following of the said *John*, in the presence and hearing of those subjects last mentioned, to wit, *John J.* (meaning the said *John*) is a forsworn old rogue, and forswore himself in *Russel's* suit (meaning at the abovementioned trial of the said issue).

AND, &c. (*reciting the second count again with these words*) to wit, *John J.* (meaning the said *John*) gave false evidence on the trial of that cause (meaning at the abovementioned trial of the said issue).

AND, &c. (*reciting the second count again with these words*) to wit, *John J.* (meaning the said *John*) hath forsworn himself at *Grimstedtown* (meaning at the trial of the said issue).

AND, &c. (*reciting the second count again with these words*) to wit, *John J.* (meaning the said *John*) is a perjured rogue, and has forsworn himself (meaning that the said *John* hath committed perjury in his evidence

DECLARATIONS, PLEADINGS, &c.

evidence by him so given at the said trial of the said cause).

AND, &c. (*reciting the second count over again with these words*) to wit, *John J.* (meaning the said *John*) gave false evidence in *Russel's* cause (meaning at the said trial of the said issue); by means of speaking, publishing and declaring of which said several false, feigned, scandalous and opprobrious words, the said *John* is not only very much prejudiced, injured and damaged in his good name, fame, credit, reputation and business aforesaid, and fallen into public scandal, infamy and disgrace amongst his neighbours and other good and worthy subjects of this realm, insomuch that divers of those neighbours and subjects to whom the innocence and integrity of the said *John* was unknown, have always from the time of speaking and publishing of the said words so vehemently suspected the said *John* to have been guilty of perjury, and to be a man worthy of no credit, that they on that account have always from that time hitherto wholly refused, and still do daily more and more refuse to have any commerce, dealing or discourse with him, or have any thing to do with him as before they were accustomed to have, but also the said *Eliz. H.* by reason thereof hath wholly from thence hitherto refused, and still wholly refuses to consummate matrimony with the said *John*, and hath wholly slighted and rejected him, by which the said *John* hath wholly lost his happy state which he might have had and enjoyed by the said marriage, to the said *John* his damage of one thousand pounds, &c.

Declaration
for charging
a woman
with murdering a
child.

—To wit, *Thomas Cont*, &c. was attached to answer *Ann Ware*, widow, of a plea of trespass upon the case, &c. And whereupon the said *Ann* by her attorney, complains, THAT WHEREAS the said *Ann* was a good, creditable, true and faithful subject of this kingdom, and as such from the time of her nativity to this present time hath borne, governed and behaved herself, and always lived in and followed a sincere, pious, regular and strict course of life, being during

during the whole time aforesaid a most diligent observer and keeper of the laws of this kingdom, always having God before her eyes, and from all manner of murder or felony, or other crime of the like nature, and from being any way whatsoever instrumental to such like wickedness hath remained and continued for the whole space of her life past innocent, free and unsuspected, and that such crimes and those who commit them might immediately receive condign punishment according to their demerits she hath always hitherto strenuously laboured, by which means the said *Ann* had obtained the favour, benevolence and good will of divers worthy, honest, faithful subjects of this realm, and her person, goods and good name safe and unhurt was hitherto preserved, not in the least subjected to the rigour of the laws provided against such offenders, yet the said *Thomas* very well knowing all and singular the premises, and maliciously envying the happy state and condition of the said *Ann*, and contriving, devising and intending to deprive the said *Ann* not only of her good name, fame, credit and estimation aforesaid, and to bring on her the hatred and displeasure of those worthy, honest, faithful subjects of this realm whose love and favour she had by her innocence and behaviour obtained, but also of all and singular her goods and chattels, and to put her in peril of losing her life, on the first day of *September*, in the eighteenth year of the reign of his present majesty King *George* the second, over *Great Britain*, &c. at aforesaid, in the said county of *Sussex*, in a certain discourse that the said *Thomas* then and there had with divers worthy subjects of this realm of and concerning the said *Ann*, the said *Thomas* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these false, feigned, scandalous and opprobrious *English* words following of the said *Ann*, in the presence and hearing of those subjects, to wit, she (meaning the said *Ann*) hath made off with a child (meaning that she the said *Ann* hath murdered a child) egad I caught her about it.

AND

AND afterwards, the same day and year last aforesaid, at aforesaid, in the said county of *Suffex*, in a certain other discourse that the said *Thomas* then and there had with divers other worthy subjects of this realm of and concerning the said *Ann*, he the said *Thomas* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these other false, feigned, scandalous and opprobrious *English* words following of the said *Ann*, in the presence and hearing of those subjects last mentioned, to wit, goody *Ware* (meaning the said *Ann*) has made off with a child (meaning that she the said *Ann* hath murdered a child) egad I caught her about it.

AND afterwards, &c. *reciting the second count again with these words*) to wit, she (meaning the said *Ann*) hath made off with a child (meaning she the said *Ann* hath murdered a child, but don't say any thing about it; for the old woman (meaning the said *Ann*) will be hanged; egad I am loth to hang her.

AND afterwards, &c. *(reciting the second count again with these words)* to wit, she (meaning the said *Ann*) was a fool to do as she has done to make off with a child (meaning that she the said *Ann* was a fool to murder a child); whereas in truth the said *Ann* is no wise guilty of the offences aforesaid so injuriously charged on her by the said *Thomas*, by his promulgation of the aforesaid *English* words; by means of speaking, publishing and declaring of which said several false, feigned, scandalous and opprobrious *English* words, the said *Ann* is not only very much prejudiced, injured and damnified in her good name, fame, credit and reputation aforesaid, and fallen into public scandal, infamy and disgrace among her neighbours, and other good and worthy subjects of this realm, but also divers of those neighbours and subjects to whom the innocence and integrity of the said *Ann* was unknown, have always from the time of speaking and publishing of the said *English* words, so vehemently suspected the said *Ann* to have been guilty of murder and to be a woman worthy of death, that they
on

on that account have always from that time hitherto wholly refused, and still do more and more refuse to have any communication or discourse with her, or have any thing to do with her as before they were accustomed to have, wherefore she the said *Ann* says, that she is thereby injured, and hath damage to the value of five hundred pounds, and therefore she hath brought this suit, &c.

—To wit, *Robert Haines*, gent. one of the attornies of his Majesty's court before the said King, according to the liberties and privileges of the said court for such attornies and other ministers of the said court from time immemorial used and approved of in the said court, present here in court in his own proper person, complains of *John Edmunds*, being in the custody of the marshal of the Marshalsea of our said lord the King, before the King himself. FOR THAT WHEREAS the said *Robert* now is a good, true, faithful and honest subject of this realm, and as such a good, true, faithful and honest subject from the time of his nativity hitherto hath behaved and governed himself, and has all the time aforesaid been held and reputed to be a man of good name, fame and reputation, and from any kind of perjury, trickery, fraud or deceit, or such other hurtful crime, or from the stain or suspicion of them or any of them throughout his whole life past hath lived and continued free and entirely unsuspected.

Declaration
for calling an
attorney a
forsworn
rogue.

Warren.

AND WHEREAS the said *Robert* now is and for several years last past hath been an attorney of the court of our lord the King, before the said King (the same court being at *Westminster*, in the county of *Middlesex*) and in the office and business of an attorney of the said court, faithfully and honestly for all the time aforesaid has governed and behaved himself, whereby the said *Robert* had not only deservedly obtained and had the favour, good opinion and credit of all persons acquainted with him and other good subjects of this realm, but also daily gained, and got divers great gains and profits as an attorney of the said court here

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here of divers of his clients in the said court, for carrying on and defending of their causes and business; nevertheless the said *John* knowing the premises, and greatly envying the happy state and condition of the said *Robert*, and contriving and maliciously intending the said *Robert* in his good name, fame, condition and reputation to hurt, injure and degrade, and him in his business aforesaid to prejudice and damnify, and to cause the said *Robert* to be esteemed and reputed a person guilty of perjury, and to make him subject and liable to the penalties and pains provided and inflicted by the laws and statutes of this realm against those who commit perjury, on the day of in the seventh year of the reign of his present Majesty, at in the said county of in a certain discourse that the said *John* then and there had with the said *Robert* of and concerning the said *Robert* in his business aforesaid, in the presence and hearing of divers liege subjects of this realm, certain false, feigned, scandalous and opprobrious words of the said *Robert* in his business aforesaid, to the said *Robert* in the presence and hearing of those liege subjects last mentioned, falsely and maliciously said, rehearsed and published, in these *English* words following, to wit, you (meaning the said *Robert*) are a rogue and a forsworn rogue, and I (meaning the said *John*) will prove it.

AND ALSO afterwards, the same day and year, at aforesaid, in a certain other discourse that the said *John* then and there had with the said *Robert* of and concerning the said *Robert* in his business aforesaid, in the presence and hearing of divers other subjects of this realm, certain other false, feigned, scandalous and opprobrious words of the said *Robert* in his business aforesaid to the said *Robert*, in the presence and hearing of those liege subjects last mentioned, falsely and maliciously said, rehearsed and published, in these *English* words following, to wit, you (meaning the said *Robert*) are a forsworn rogue; by reason of speaking, promulging and publishing of which said several false, feigned, scandalous and opprobrious words, he the

said

John

faid *Robert* is not only greatly hurt and detrimented in his good name, fame and reputation aforesaid, and is greatly scandalized and degraded, but also in his business aforesaid as an attorney of the court here is greatly lessened, prejudiced and detrimented, and divers subjects of this realm who were clients to and used to employ the said *Robert* as their attorney in their said business, by reason of speaking and publishing the several false, feigned, scandalous and opprobrious words aforesaid, have since refused, and do daily more and more refuse to employ him in their business aforesaid, or have any thing to do with him as before they were used and accustomed, to the said *Robert* his damage of one hundred pounds, and thereupon he brings his suit, &c.

— To wit, *John Farrow* complains of *John Thatcher* being, &c. FOR THAT WHEREAS the said *John F.* is a good, true, faithful and honest subject of this kingdom, and as such hath always from the time of his nativity hitherto carried, governed and behaved himself, and hath always been taken, held and reputed by all his friends and neighbours, and other worthy subjects of this kingdom, to be a man of good name, fame, credit and reputation, and has always for all his life time past hitherto lived and continued free, clear, innocent and wholly unsuspected of and from all, and all manner of trickery, deceit and falshood, and every other such hurtful crime, and also of and from all and all manner of suspicion of bankruptcy, breaking or becoming bankrupt.

Declaration
for words
spoken
against
plaintiff's
credit, tel-
ling him he
owed more
than he was
able to pay.

Warren.

AND WHEREAS the said *John F.* now is and for divers years now last past hath been a butcher, and hath for all the said time used and exercised the art, trade and business of a butcher, without any falsity, trick or deceit, and always well and faithfully observing and keeping up his credit and days of payment of all sums of money contracted by him in his said business with all his contracts, and hath thereby for all the time aforesaid justly and honestly sought and got his livelihood and faculty of living, by means whereof he the said *John F.* before the speaking and publishing of the several

several false and scandalous words hereafter mentioned, had not only deservedly obtained and got to himself the favour, benevolence, good opinion, and credit of all persons any ways trading with him, and of very many other good and worthy subjects of this realm, but also daily gained and acquired sundry great profits in his aforesaid business, to the comfortable support of himself and his family, and to the great increase of his riches; yet the said *John T.* well knowing all and singular the premises aforesaid, but greatly envying the happy state and condition of the said *John F.* and contriving and maliciously intending to hurt, injure, degrade and damnify the said *John F.* in his good name, fame, reputation, and credit in his business aforesaid, and to cause him the said *John F.* to be reputed to be a person of no credit, and unable to pay his just and true debts, on the eighteenth day of *November*, in the year of our Lord one thousand seven hundred and thirty five, at _____ in the county aforesaid, in a certain discourse which he the said *John T.* then and there had with divers worthy subjects of this kingdom of and concerning the said *John F.* in his business aforesaid, he the said *John T.* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these false, feigned, scandalous and opprobrious *English* words following of the said *John F.* in his business aforesaid, in the presence and hearing of those subjects, to wit, *John F.* (meaning the said *John F.*) owes eighty pounds, and hath not a farthing or any thing to pay it (meaning to pay the said eighty pounds so owing by the said *John F.*)

AND afterwards, the same day and year above-said, at _____ aforesaid, in a certain other discourse which he the said *John T.* then and there had with one *Richard Reeves*, then a customer of the said *John F.* in the presence and hearing of divers other worthy subjects of this kingdom of and concerning the said *John F.* in his business aforesaid, he the said *John T.* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these

these other false, feigned, scandalous and opprobrious *English* words following of the said *John F.* to the said *Richard R.* in the presence and hearing of those subjects last mentioned, to wit, don't he (meaning the said *John F.*) owe you (meaning the said *Rich.*) money? if he (meaning the said *John F.*) does, and you (meaning the said *Richard*) don't arrest him, (meaning the said *John F.*) if he (meaning the said *John F.*) owes you (meaning the said *Rich.*) twenty pounds, he (meaning the said *John F.*) would not give twenty shillings for the money, (meaning the said twenty pounds) for he (meaning the said *John F.*) owes eighty pounds, and has not one farthing, or any thing to pay it (meaning to pay the said eighty pounds).

AND afterwards, &c. (*as the second count with these words*) to wit, if you (meaning the said *Rich.*) do not arrest him (meaning the said *John F.*) you (meaning the said *Rich.*) will never get the money he (meaning the said *John F.*) owes you (meaning the said *Rich.*) by means of speaking and publishing of which said several false, feigned, scandalous and opprobrious words, he the said *John F.* is not only much hurt and prejudiced in his good name, fame, credit and esteem, but also is fallen into great disrepute and discredit amongst his customers and other worthy subjects of this realm with whom he had dealt and traded in his aforesaid business, and of whom he the said *John F.* was accustomed to buy sundry goods and merchandizes in his aforesaid business on credit, without ready money, insomuch that not only the said *Rich R.* to whom the said *John F.* at the time of the speaking of the said several words was indebted in a large sum of money, to wit, in seventy pounds, on occasion of the speaking of the said words, so much suspected and believed the said *John F.* to be a man worthy of no credit, and unable to pay his just debts, that the said *Rich.* on that account afterwards, to wit, on the twentieth day of *November*, in the year aforesaid, the said sum of seventy pounds so due and owing from the said *John F.* to the said *Rich.* being then not paid or satisfied to the said *Rich.*) he the said *Rich.* for the recovery of

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the said seventy pounds impleaded the said *John F.* and sued and prosecuted him, and put him to great expences, to wit, at aforesaid, and also divers other persons to whom the said *John F.* was indebted in divers and sundry great sums of money at the time of the speaking of the said words, have on that occasion, on a sudden and in an untimely manner, prosecuted and sued the said *John F.* at law for the recovery and obtaining of their respective debts then due to them respectively as aforesaid, insomuch that the said *John F.* hath been obliged necessarily to lay out and expend about his defence in those particulars, divers large sums of money, amounting in the whole to forty pounds, whereby the said *John F.* is greatly impoverished and damnified in his credit, and divers other subjects of this kingdom who before the speaking of the said words were accustomed and used to trade with the said *John F.* in his business aforesaid on credit, without ready money, have always from the time of the speaking of the said words, and on occasion of the speaking of the same refused, and still do daily more and more refuse to buy or sell, or have any thing to do with the said *John F.* in his business aforesaid, as before they were used and accustomed, to the said *John F.* his damage of one hundred pounds, and therefore he brings his suit, &c.

Declaration
for calling
plaintiff a
sodomite,
sodomitish
rogue and
sodomitish
dog.

Warren.

—To wit. *Edmund Mackrell* complains of *Daniel White* being, &c. FOR THAT WHEREAS the said *Edmund* now is a good, true, faithful and honest subject of this kingdom, and as such a good, true, faithful and honest subject hath always from the time of his nativity hitherto, carried, governed and behaved himself, and hath always been taken, held, reputed and esteemed by all his friends and neighbours, and other good and worthy subjects of this kingdom, to be a man of good name, fame, credit, reputation, conversation and behaviour, and hath all his life time hitherto lived and continued free, clear, innocent, and wholly unsuspected of and from all, and all manner of whoredom, fornication, bestiality, and that most odious, unnatural, and abominable sin and crime not fit to be mention-

ed

ed among Christians, called sodomy, and every other such detestable and offensive crime, always having the fear of God before his eyes, by means of which said premises he the said *Edmund*, before the speaking and publishing of the last false, feigned, scandalous and opprobrious *English* words hereafter mentioned, had deservedly obtained and acquired to himself the favour, benevolence, good opinion, credit and esteem of all his friends and neighbours, and very many other good and worthy subjects of this kingdom, yet the said *Daniel* very well knowing all and singular the premises aforesaid, but greatly envying the happy state and condition of the said *Edmund*, and contriving and maliciously intending not only to hurt, injure, degrade and damnify the said *Edmund* in his good name, fame, credit and reputation, and to cause him to fall into public scandal, infamy and disgrace amongst his friends and neighbours, and other good and worthy subjects of this kingdom, and to be publicly reputed to be a person guilty of that detestable and abominable sin and crime called sodomy, and by reason thereof to cause and make his neighbours, friends, and other persons to whom he was ever known, to abhor and desert him, and withdraw themselves from his company and conversation, but also wrongfully to subject him to the punishments, pains and penalties, by the laws and statutes of this realm made and provided against those who are guilty of that abominable sin and crime called sodomy, on the nineteenth day of *January*, in the year of our Lord one thousand seven hundred and thirty six, at in the county aforesaid, in a certain discourse which he the said *Daniel* then and there had with divers good and worthy subjects of this kingdom of and concerning the said *Edmund*, he the said *Daniel* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these false, feigned, scandalous and opprobrious *English* words following of the said *Edmund*, in the presence and hearing of those subjects, to wit, he (meaning the said *Edmund*) is a sodomite, and I meaning the said *Daniel*) can prove him (meaning the said *Edmund*) to be a sodomite; and the said *Edmund* in truth and in fact

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faith that he never was, nor is guilty of committing that most detestable and odious sin and crime called sodomy.

AND afterwards, to wit, on the same day and year aforesaid, at aforesaid, in the county aforesaid, in a certain other discourse which he the said *Daniel* then and there had with divers other worthy subjects of this kingdom of and concerning the said *Edmund*, he the said *Daniel* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these other false, feigned, scandalous and opprobrious *English* words following of the said *Edmund*, in the presence and hearing of those subjects last mentioned, to wit, he (meaning the said *Edmund*) is a sodomite; and the said *Edmund* in truth and in fact faith that he never was, nor is guilty of committing that most detestable and odious sin and crime called sodomy.

AND afterwards, &c. (*as in the second count*) with these words, to wit, you (meaning the said *Edmund*) are a sodomite, and I (meaning the said *Daniel*) will prove you (meaning the said *Edmund*) a sodomite; and the said *Edmund* in truth and in fact faith that he never was, nor is guilty of committing that most detestable and odious sin and crime called sodomy; by means of speaking and publishing of which said several false, feigned, scandalous and opprobrious *English* words, he the said *Edmund* is hurt, injured, degraded and damnified in his good name, fame, credit and reputation, and fallen into public scandal, infamy and disgrace amongst his friends and neighbours, and other good and worthy subjects of this kingdom, inasmuch that many of the friends and neighbours of the said *Edmund*, and other good and worthy subjects of this kingdom, to whom the innocence and integrity of the said *Edmund* in the premises were unknown, have so vehemently suspected the said *Edmund* to have been guilty of that abominable sin and crime called sodomy, that they have always from the time of the speaking of the said words hitherto on that account abhorred and deserted him, and withdrawn themselves from his company and conversation, and still do
daily

daily more and more refuse and desist from having any manner of fellowship or conversation with him upon any account whatsoever as before they were used and accustomed to have, to the said *Edmund* his damage of one hundred pounds, and therefore he brings his suit, &c.

To wit. *Edmund Dore* complains of *William Lyne*, Declaration in custody, &c. WHEREAS the said *Edmund* now is a good, true, faithful and honest subject of this kingdom, and as such a good, true, faithful and honest subject, hath always carried, governed and behaved himself, and has always been taken, held and reputed by all his friends and neighbours, and other good and worthy subjects of this kingdom, to be a man of good name, fame, credit and reputation, and hath for all his life time past hitherto lived and continued free, clear, innocent, and wholly unsuspected of and from all, and all manner of theft, fraud, deceit and falsehood, and other such hurtful crime.

for felonious words spoken of plaintiff.

AND WHEREAS the said *Edmund* now is, and for divers years now last past hath been a blacksmith, and hath for all the said time used the art, trade and business of a blacksmith, without any falsity, fraud, theft or deceit, by means whereof the said *Edmund* not only deservedly obtained and acquired the benevolence, good opinion and credit of all his neighbours and friends, and other worthy subjects of this kingdom to whom he was in any wise known, but also daily gained and acquired sundry great gains and profits in his aforesaid business, to the comfortable support of himself and his family, and to the great increase of his riches; yet he the said *Wm.* well knowing all and singular the premises, but greatly envying the happy state and condition of the said *Edmund*, and contriving and maliciously intending to hurt, injure, degrade and damnify the said *Edmund* in his good name, fame, credit and reputation in his business, and to cause him to be reputed a felon and thief, and to bring him into danger of the forfeiture of his goods and chattels, lands and tenements, and loss of his life, on the twentieth day of

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of *April*, in the year of our Lord one thousand seven hundred and thirty seven, at *Lymington*, in the county aforesaid, in a certain discour̃e which he the said *Wm.* then and there had with divers other worthy subjects of this kingdom of and concerning the said *Edmund*, he the said *Wm.* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these false, feigned, scandalous and opprobrious *Englisch* words following of the said *Edmund*, in the presence and hearing of divers of his said Majesty's subjects, to wit, *Edmund Dore* (meaning the plaintiff) stole oil; and afterwards, to wit, the same day and year aforesaid, at aforesaid, in the county aforesaid, in a certain other discourse which he the said *Wm.* then and there had with divers other worthy subjects of this kingdom of and concerning the said *Edmund*, he the said *Wm.* then and there falsely and maliciously said, rehearsed, proclaimed openly, and loudly published these other false, feigned, scandalous and opprobrious *Englisch* words following of the said *Edmund*, in the presence and hearing of those subjects last mentioned, to wit, *Edmund Dore* (meaning the plaintiff) stole oil off the quay (meaning a place where merchants usually land their goods) by bushels full; and afterwards, (*re-citing the second count over again, with these words*) to wit, *Edmund Dore* (meaning the plaintiff) stole oil off the quay; and afterwards, &c. (*with these words*) to wit, he (meaning the plaintiff) stole tallow; and afterwards, &c. (*with these words*) to wit, *Edmund Dore* (meaning the plaintiff) stole tallow by the lumps; and afterwards, &c. (*with these words*) to wit, *Edmund Dore* (meaning the plaintiff) stole salt; and afterwards, &c. (*with these words*) to wit, *Edmund Dore* (meaning the plaintiff) stole salt and sold saltern grates from the salt works; and afterwards, &c. (*with these words*) to wit, *Edmund Dore* (meaning the plaintiff) stole an anvil; by means of speaking, publishing and declaring of which said several false, feigned, scandalous and opprobrious *Englisch* words aforesaid, he the said *Edmund* is much hurt, injured, degraded and damnified in his good name, fame, credit and reputation, and fallen into

into great disrepute and discredit amongst his neighbours, and other worthy subjects of this kingdom with whom he dealt, insomuch that divers of those neighbours and other worthy subjects of this kingdom, have on occasion of the speaking of the said false and defamatory words, so vehemently suspected the said *Edmund* to be guilty of theft, and to be a person worthy of no credit, that they have wholly refused, and still do daily more and more refuse to have any manner of dealing, commerce, or conversation with him on any account, as before they were used and accustomed to have, to the damage of the said *Edmund* five hundred pounds, and therefore he brings his suit, &c.

Hants, to wit. *Leonard Crap* complains of *Robert Graham*, Esq; sheriff of the county aforesaid. FOR THAT the said *L.* heretofore, that is to say, in the term of *Easter*, in the seventh year of the reign of our lord the now King, in the court of our said lord the King, before the King himself, at *Westminster*, in the county of *Middlesex*, by bill, without the writ of the said lord the King, and by judgment of the said court, recovered against one *Charles Lucas* sixty seven pounds for his damages which he had sustained, as well by reason of the not performing several promises and undertakings made to the said *Leonard* by the said *Charles*, as for his costs and charges which he had been put to about his suit in that behalf whereof he is convicted, as by the record and proceedings thereof in the said court of our said lord the King before the King himself, at *Westminster* aforesaid remaining, it doth more fully appear, which said record and proceedings were afterwards had by virtue of his said Majesty's writ of error into the Exchequer chamber of the said lord the King, before the justices of the common bench and barons of the Exchequer of the said lord the King there, to wit, at *Westminster* aforesaid, and afterwards, to wit, upon the twenty ninth day of *April*, in the eighth year of his said Majesty's reign, in the said Exchequer chamber at *Westminster* aforesaid, before the said justices and barons, there it was considered by the said court there that the said judgment

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against a sher-
riff for a
false return
of a *fiery*
facias after
writ of
error.
Serj. Dra-
per.

ment should in all things be affirmed, and that the said *Leonard C.* should recover against the said *Charles* ten pounds, being adjudged to the said *Leonard* at his request by the said court, according to the statute in that case made and provided, for his damages, costs and charges which he had expended by reason of the delay of the execution of the judgment aforesaid, and by the prosecution of the writ of error, and thereupon the record and proceedings aforesaid were remitted by the said justices and barons before the said lord the King, wheresoever, &c. as by the said record and proceedings now remaining in the said court of the said lord the King, before the King himself here, to wit, at *Westminster* aforesaid, more fully appears; and the said damages, costs and charges, or any part thereof, being neither paid nor satisfied to the said *Leonard*, he the said *Leonard*, for the more speedy obtaining the same after the obtaining the said judgment as aforesaid, that is to say, on the twenty third day of *April*, in the eighth year of the reign of his said present Majesty, did sue out of the said court of our said lord the King here, to wit, at *Westminster* aforesaid, his Majesty's writ of *feri facias*, directed to the then sheriff of *Hants*, by which said writ the then sheriff was commanded that of the goods and chattels of the said *C.* in his bailiwick he should levy the said sixty seven pounds, and also the said ten pounds damages, costs and charges in form aforesaid recovered, and that he should have the said money before our said lord the King, at *Westminster* aforesaid, on *Monday* next after the morrow of the *Ascension* of our Lord, to render to the said *Leonard* for his damages, costs and charges aforesaid whereof he is convicted, and that he should then have there that writ, which said writ of *feri facias* afterwards, and before the return thereof, that is to say, on the sixth day of *May*, in the year last aforesaid, at *Ringwood*, in the county of *Southampton* aforesaid, was delivered to the said *Robert*, then sheriff of the said county of *Southampton*, to be executed in due form of law; and although the said *Charles*, at the time of the delivery of the said writ of *feri facias* to the said *Robert* as aforesaid, and afterwards before the
return

return thereof, that is to say, on the tenth day of *May*, in the year last aforesaid, had divers goods and chattels within his the said sheriff's bailiwick, to wit, at *Ringwood* aforesaid, in the county of *S.* aforesaid, whereof the said *Robert* might have caused the damages, costs and charges aforesaid so as aforesaid recovered, to have been levied, and the said *Robert* then and there had notice; nevertheless the said *Robert* then and until at and after the return of the same writ, being sheriff of *Hants* aforesaid as aforesaid, contriving and fraudulently intending the said *Leonard* of his damages, costs and charges aforesaid to deceive and defraud, the aforesaid damages, costs and charges, or any part thereof of the said goods and chattels of the said *Charles* in his bailiwick as aforesaid, did not cause to be levied, but to cause the same to be levied then and there wholly refused and neglected, and at the return of the said writ of *fieri facias* did falsely, deceitfully and fraudulently return upon the said writ to the said lord the King here, to wit, at *Westminster* aforesaid, that the said *Charles* had no goods or chattels in his bailiwick whereof he could levy the damages, costs and charges aforesaid, or any part thereof, as by the said writ he was commanded, and by reason of the premises the said *Leonard* is very likely and in great danger of losing totally his damage, costs and charges, and is greatly delayed in recovering the same, to the damage of the said *Leonard* one hundred pounds, and thereof he brings his suit. *Pledges, &c.*

—To wit. *Thomas Morgan*, late of, &c. late sheriff of *Hampshire* aforesaid, was attached to answer *Samuel Musten* of a plea of trespass upon the case, &c. and whereupon the said *Samuel* by his attorney, *fieri facias*.
complaineth, THAT WHEREAS he the said *Samuel*, Serj. *Boyle*, otherwise, that is to say, in the term of *St. Michael*, in the sixth year of the reign of our lord the King that now is, before *St. Robert Eyre*, knt. and his companions, then justices of our said lord the King of the bench here, that is to say, at *Westminster*, in the county of *Middlesex*, by consideration of the same court had recovered against
one

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against the
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one *Anthony Batten* twenty seven pounds ten shillings, which to the said *Samuel* in the same court of our said lord the King of the bench before the justices aforesaid were adjudged for his damages which he had sustained by reason of certain promises and undertakings made to the said *Samuel* by the aforesaid *Anthony*, at *Ringwood*, in the county aforesaid not performed, whereof he is convicted, as by the record and proceedings thereof in the said court of our lord the King here remaining it doth more fully appear; and the said damages, or any part thereof being neither paid nor satisfied to the said *Samuel*, he the said *Samuel* for a more speedy obtaining of the same after the obtaining of the said judgment as aforesaid, that is to say, on the thirteenth day of *June*, in the seventh year of the reign of his said Majesty, did prosecute out of the said court of our lord the King here his Majesty's writ of *feri facias*, directed to the then sheriff of *Hampshire* aforesaid, by which said writ the said then sheriff was commanded, that of the goods and chattels of the aforesaid *Anthony* in his bailiwick he cause to be made the aforesaid twenty seven pounds ten shillings, the damages in form aforesaid recovered, and that he should have that money before the justices of the said lord the King, at *Westminster* aforesaid, from the day of *St. Michael* in three weeks, to render to the said *Samuel* for the damages aforesaid whereof he is convicted, and that he should have there that writ, which said writ of *feri facias* afterwards and before the return thereof, that is to say, on the eleventh day of *October*, in the said seventh year of the reign of his said Majesty, at *Ringwood* aforesaid, was delivered to the aforesaid *Thomas*, then sheriff of the said county, to be executed in due form of law; and although the aforesaid *Anthony* at the time of the delivery of the said writ of *feri facias* to the aforesaid *Thomas* as aforesaid, and afterwards, that is to say, on the fifteenth day of *October*, the same year, had divers goods and chattels within his bailiwick, that is to say, at *Ringwood* aforesaid, whereof the aforesaid *Thomas* might have caused to have been made the damages aforesaid so as aforesaid recovered, nevertheless the aforesaid *Thomas*, then, and
until

until at and after the return of the same writ, being sheriff of the county aforesaid as aforesaid, contriving and fraudulently intending the said *Samuel* of his damages aforesaid to deceive and defraud, the aforesaid damages, or any part thereof of the said goods and chattels being in his bailiwick as aforesaid did not cause to be made, and to cause the same to be made then and there wholly refused and neglected, and at the return of the said writ of *feri facias* did falsely, deceitfully and fraudulently return upon the said writ to the said justices here, that the said *Anthony* had no goods or chattels in his bailiwick whereof he was able to make the damages aforesaid, or any part or parcel thereof, as by the said writ he was commanded, and by reason of the premises the said *Samuel* is very likely and in great danger of losing totally his damages aforesaid, to the damage of the said *Samuel* of fifty pounds, and thereupon he bringeth suit, &c.

MICHAELMAS TERM, 8 GEO. II. 1735.

Roch versus Ayres.

—To wit. *Patrick Roch* complains of *John Ayres*, in the custody of the marshal, &c. for this, THAT ^{For freight.} WHEREAS upon the thirtieth day of *January*, in the year of our Lord one thousand seven hundred and thirty four, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, in consideration that the said *Patrick*, at the special instance and request of the said *John Ayres*, had upon the good ship called the *Three Friends*, whereof then was master for the said present voyage the said *Patrick Roch*, then riding at anchor in the *Mole of Malaga*, and by God's grace bound for *Guernsey* and *Southampton*, diverse, to wit, fourteen butts of new mountain wine for the account of risque of the said *John Ayres* to be delivered in the like good order and well conditioned at the aforesaid ports of *Guernsey* and *Southampton*, the danger of the seas only excepted, unto Mr. *John le Cary* at *Guernsey*, what he pleased to take out of the remainder to the said *John Ayres*,

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Ayres, or to their assigns, paying freight for the said goods at thirty five shillings per ton, or two butts, with primage and average accustomed, and the said *Patrick* at the like instance and request of the said *John Ayres* had then and there taken upon himself, and faithfully promised the said *John Ayres* well and truly to deliver the said butts of wine; accordingly he the said *John Ayres* took upon himself and then and there faithfully promised the said *Patrick* to pay him the said *Patrick* for the freight of the said fourteen butts of the said new mountain wine at the rate aforesaid when afterwards he should be thereunto required; and the said *Patrick* in fact says, that he the said *Patrick* afterwards, to wit, upon the twenty eighth day of *August*, in the year aforesaid, delivered the said fourteen butts of wine, to wit, eleven of the said butts to the said *John le Cary* at *Guernsey*, and the remaining three butts thereof to the said *John Ayres*, at *Southampton* aforesaid, according to his undertaking aforesaid, and that the freight of the said fourteen butts of new mountain wine, at the rate aforesaid, amounted to the sum of twenty four pounds ten shillings of lawful money of *Great Britain*, whereof the said *John Ayres* afterwards, to wit, upon the same day and year, at *London* aforesaid, in the parish and ward aforesaid had notice.

AND WHEREAS ALSO the said *John Ayres* afterwards, to wit, upon the same day and year last above-mentioned, at *London* aforesaid, in the parish and ward aforesaid, was indebted unto the said *Patrick* in other twenty four pounds ten shillings of like lawful money of *Great Britain*, for the freight of divers other goods and merchandizes by him the said *Patrick*, at the like instance and request of the said *John Ayres*, in another ship from the *Mole of Malaga* aforesaid imported and delivered; and being so indebted, he the said *John Ayres* afterwards, to wit, upon the same day and year, at *London* aforesaid, in the parish and ward aforesaid, in consideration thereof took upon himself, and to the said *Patrick Roch* then and there faithfully promised to pay him the said sum of money last above-mentioned when afterwards he should be thereunto required.

AND

AND WHEREAS ALSO the said *John Ayres* afterwards, to wit, on the same day and year last above-mentioned, at *London* aforesaid, in the parish and ward aforesaid, was indebted to him the said *Patrick* in another sum of twenty four pounds ten shillings of like lawful money, for such a sum of money by him the said *Patrick* at the special instance and request of him the said *John Ayres* before that time paid, laid out and expended; and being so indebted, he the said *John Ayres* afterwards, to wit, upon the same day and year, at *London* aforesaid, in the parish and ward aforesaid, in consideration thereof took upon himself, and to the said *Patrick* then and there faithfully promised to pay him the said sum of money last abovementioned when afterwards he should be thereunto required; yet the said *John Ayres* not regarding his said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said *Patrick* in this behalf, hath not yet paid him the said several sums of money, or any part thereof, to the said *Patrick* (although the said *John Ayres* afterwards, to wit, upon the same day and year last abovementioned, and often afterwards, at *London* aforesaid, in the parish and ward aforesaid, by him the said *Patrick* was requested so to do) but hath hitherto altogether refused, and still doth refuse to pay the same to him, whereby he says he is prejudiced, and hath damage to the value of forty pounds, and thereupon he bring his suit, &c.

And the said *John Ayres*, by *William Southhouse* his Demurrer. attorney, comes and defends the wrong and injury when, where, and as the court shall award, and saith that the said *Patrick Roch* ought not to have his action against him, for that the said declaration, and the matters therein contained are not sufficient in law for the said *Patrick* to have and maintain his said action against the said *John*, to which declaration and the demurrer * therein contained, he the said *John* is not obliged, nor by the law

* They waived their demurrer, and pleaded.

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law of the land is in any manner bound to answer, and this he is ready to verify; wherefore, for default of a sufficient declaration of the said *Patrick*, the said *John* demands judgment; and that the said *Patrick* may be barred from having his said action against him, and for causes of demurrer, the said *John* according to the form of the statute in that case made and provided, sheweth the court these causes following, to wit, for that the declaration saith the said *Francis Brown* shipped divers, but doth not say divers of what, either goods or merchandizes, or any thing else, and for this that the said declaration is uncertain and wants form.

J. Agar.

Let the plaintiff join in demurrer. R. Draper.

HILARY TERM, 8 Geo. II.

Grimes *versus* Woodford.

For right of
common.

—To wit. *T. Grimes*, gent. complains of *J. Woodford*, in the custody of the marshal, &c. in a plea of trespass on the case, for this, THAT WHEREAS he the said *Thomas* on the first day of *March*, in the sixth year of the reign of his present Majesty, and long before was, and ever since hath been, and still is possessed of and in one messuage and twenty two acres of land with the appurtenances, situate, lying and being in the parish of *Brixton*, in the isle of *Wight*, in the county of *Southampton*; and the said *Thomas* by reason thereof of right had and was used to have, and during all the time aforesaid of right ought to have had, and still of right ought to have common of pasture for ten sheep of him the said *Thomas* in a certain close called *Marsh Green*, in the parish of *Brixton* aforesaid, every year, at all times of the year at his free will, as belonging and appertaining to his said tenements with the appurtenances; yet the said *John Woodford* well knowing the premisses, but designing and maliciously intending unjustly to prejudice and injure the said *Thomas*, and injure and deprive him of his said right

right of common, and the profit and advantage thereof, afterwards, to wit, upon the same day and year, and from thence continually hitherto, hath put in and kept in and upon the said close called *Marsh Green*, great numbers of sheep and lambs, to wit, one hundred sheep, one hundred lambs, and during all the said time hath fed, eat up, trod down and consumed the grass there growing, with the said sheep and lambs, by reason whereof the said *Thomas* during all the time last abovementioned, could not have, use and enjoy his said common of pasture for his said ten sheep, in the said close called *Marsh Green*, in so ample and beneficial a manner as he before that time had and was used to have, and of right ought to have had, but during all the said time last abovementioned lost great profit and advantage of his said common of pasture, to the damage of the said *Thomas* ten pounds, and thereof he brings his suit, &c.

EASTER TERM; 8 GEO. II.

May versus Carthew and Maunder.

—To wit. *Walter May* complains of *Peter Carthew* For use and
and *John Maunder*, in the custody of the marshal, &c. occupation.
for this, THAT WHEREAS the said *Peter* and *John* upon the second day of *April*, in the year of our Lord one thousand seven hundred and thirty five, at *Tiverton*, in the county aforesaid, was indebted unto the said *Walter* in twenty pounds of lawful money of *Great Britain*, for the use and occupation of a messuage with the appurtenances of him the said *Walter*, situate and being at *Tiverton* aforesaid, in the county aforesaid, by them the said *Peter* and *John*, at their special instance and request, and by the permission of the said *Walter* of and under him the said *Walter* before that time held, occupied and enjoyed; and being so indebted, they the said *Peter* and *John* afterwards, to wit, upon the same day and year abovementioned, at *Tiverton* aforesaid, in consideration thereof took upon themselves, and
to

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to the said *Walter* then and there faithfully promised that they the said *Peter* and *John* would well and truly pay and satisfy to the said *Walter* the said twenty pounds when he should be afterwards thereunto requested.

AND WHEREAS ALSO the said *Peter* and *John* afterwards, to wit, upon the same day and year abovementioned, at *Tiverton* aforesaid, in consideration that the said *Walter May*, at the like special instance and request of the said *Peter* and *John*, had permitted them the said *Peter* and *John* to have the use and occupation of another messuage with the appurtenances, situate and being at *Tiverton* aforesaid, in the county aforesaid, for a long time then lately elapsed, and the said *Peter* and *John* in pursuance of the request and permission last abovementioned, had held, occupied and enjoyed the same, accordingly they the said *Peter* and *John* took upon themselves, and to the said *Walter* then and there faithfully promised to pay him such a sum of money as the said *Walter* reasonably deserved to have for the same when thereunto required; and the said *Walter* in fact saith, that he the said *Walter* reasonably deserved to have of them the said *Peter* and *John* for the use and occupation of the said messuage with the appurtenances last abovementioned, another sum of twenty pounds, to wit, at *Tiverton* aforesaid, whereof the said *Peter* and *John* the same day and year abovementioned, at *Tiverton* aforesaid, in the county aforesaid, had notice. YET, &c.

Plead the general issue. R. Draper.

TRINITY TERM, 8 and 9 GEO. II.

Ormond versus Baker.

For wager
won on mar-
riage.

—To wit, *John Ormond* complains of *Joseph Baker*, in the custody of the marshal, &c. for this, THAT WHEREAS upon the first day of *February*, in the year of our Lord one thousand seven hundred and thirty four, at *Dorchester*, in the county aforesaid, a certain

certain discourse was had by and between the said *John Ormond* and *Joseph Baker* of and concerning the time when the said *John Ormond* would be married, he the said *John Ormond* then being single, and upon that discourse, in consideration that the said *John Ormond*, at the special instance and request of the said *Joseph Baker*, had then and there deposited one guinea of lawful money of *Great Britain* to be to the use of the said *Joseph Baker* if he the said *John Ormond* was not married in three months then next following, and also had then and there, at the like instance and request of the said *Joseph Baker*, taken upon himself and faithfully promised the said *Joseph Baker* to pay him forty nine guineas more of like lawful money if he the said *John Ormond* was not married in the said three months then next following; he the said *John Baker* then and there also deposited one guinea of like lawful money, to be to the use of the said *John Ormond* if he the said *John Ormond* was married in three months then next following, and also then and there took upon himself and faithfully promised the said *John* to pay him forty nine guineas more of like lawful money, if he the said *John Ormond* was married in the said three months then next following; and the said *John Ormond* in fact saith that he the said *John Ormond* afterwards, and in three months then next following, to wit, upon the first day of *April*, in the year of our Lord one thousand seven hundred and thirty five, at *Dorchester* aforesaid, was married to one *Sarah South*, whereof the said *Joseph Baker* then and there had notice.

AND WHEREAS ALSO, afterwards, to wit, upon the said first day of *February*, in the said year one thousand seven hundred and thirty four, at *Dorchester* aforesaid, another discourse was had by and between the said *John Ormond* and *Joseph Baker* of and concerning the time when the said *John Ormond* would be married, he the said *John Ormond* then being single, and thereupon, in consideration that the said *John Ormond* at the like instance and request of the said *Joseph Baker*, had then and there taken upon himself and faithfully promised the said *Joseph Baker* to pay him the sum

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of

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of fifty guineas of like lawful money if the said *John Ormond* was not married in three months then next following, he the said *Joseph Baker* then and there took upon himself and faithfully promised the said *John Ormond* to pay him the like sum of fifty guineas of like lawful money if he the said *John Ormond* was married in three months then next following; and the said *John Ormond* in fact saith that the said *John Ormond* afterwards, and in three months then next following, to wit, upon the said first day of *April*, in the said year one thousand seven hundred and thirty five, at *Dorchester* aforesaid, was married to the said *Sarah South*, whereof the said *Joseph Baker* then and there had notice.

AND WHEREAS ALSO afterwards, to wit, upon the said first day of *February*, in the said year one thousand seven hundred and thirty four, at *Dorchester* aforesaid, another discourse was had by and between the said *John Ormond* and *Joseph Baker* of and concerning the time when the said *John Ormond* would be married, he the said *John Ormond* then being single, and thereupon, in consideration that the said *John Ormond* at the like instance and request of the said *Joseph Baker* had then and there deposited one other guinea of like lawful money, to be to the use of the said *Joseph Baker* if he the said *John Ormond* was not married in twelve months then next following, and also had then and there, at the like instance and request of the said *Joseph Baker*, taken upon himself and faithfully promised the said *Joseph Baker* to pay him forty nine guineas more of like lawful money if he the said *John Ormond* was not married in the said twelve months then next following; he the said *Joseph Baker* then and there also deposited one other guinea of like lawful money, to be to the use of the said *John Ormond* if the said *John Ormond* was married in twelve months then next following, and also then and there took upon himself, and to the said *John Ormond* then and there faithfully promised to pay him forty nine guineas more of like lawful money if he the said *John Ormond* was married in the said twelve months then next following; and the said *John Ormond* in fact saith that he the said *John Ormond*

Ormond afterwards, and in twelve months then next following, to wit, upon the first day of *April*, in the year of our Lord one thousand seven hundred and thirty five, at *Dorchester* aforesaid, in the county aforesaid, was married to the said *Sarah South*, whereof the said *Joseph Baker* afterwards, to wit, on the same day and year last abovementioned, at *Dorchester* aforesaid, had notice.

AND WHEREAS ALSO afterwards, to wit, upon the said first day of *February*, in the year of our Lord one thousand seven hundred and thirty four, at *Dorchester* aforesaid, in the county aforesaid, another discourse was had by and between the said *John Ormond* and the said *Joseph Baker* of and concerning the time when the said *John Ormond* would be married, he the said *John Ormond* then being single, and upon that discourse last abovementioned, in consideration that the said *John Ormond* at the like instance and request of the said *Joseph Baker*, had then and there taken upon himself and faithfully promised the said *Joseph Baker* to pay him another sum of fifty guineas of like lawful money if he the said *John Ormond* was not married in twelve months then next following, he the said *Joseph Baker* then and there took upon himself and to the said *John Ormond* then and there faithfully promised to pay him the like sum of fifty guineas of like lawful money, if he the said *John Ormond* was married in twelve months then next following; and the said *John Ormond* in fact saith that he the said *John Ormond* afterwards, and in twelve months then next following, to wit, upon the said first day of *April*, in the year one thousand seven hundred and thirty five, at *Dorchester* aforesaid, was married to the said *Sarah South*, whereof the said *Joseph Baker* afterwards, to wit, upon the same day and year last abovementioned, at *Dorchester* aforesaid, had notice; yet the said *Joseph Baker* not regarding his said several promises and undertakings in this behalf made, but contriving and fraudulently intending to defraud and deceive the said *John Ormond* in this behalf, hath not yet paid to the said *John Ormond* the said several sums of money, or any part thereof (although the said

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Joseph Baker afterwards, to wit, upon the first day of *May*, in the said year last abovementioned, and often afterwards, at *Dorchester* aforesaid, by him the said *John Ormond* was requested so to do) but hath hitherto altogether refused, and still doth refuse to pay the same to him, whereby he says he is prejudiced, and hath damage to the value of two hundred pounds, and thereupon he brings his suit, &c.

Plea, no such promise. Judgment for the plaintiff.

MICHAELMAS TERM, 9 GEO. II.

Wingfield versus Hart.

By surviving
assignees of
bankrupt,
on note of
hand.

—To wit. *Susannah Gilbert* and *T. Wingfield*, surviving assignees of the debts of *Philip Hodgson*, being a bankrupt according to the form of the statutes concerning bankrupts made and provided, complain of *William Hart* being in the custody of the marshal of the Marshalsea of our Lord the King himself. FOR THAT WHEREAS the said *William* and one *Elizabeth Hart*, on the twenty seventh day of *December*, in the year of our Lord one thousand seven hundred and twenty, at *London* aforesaid, to wit, at the parish of *St. Mary le Bow*, in the ward of *Cheapside*, made their certain note in writing commonly called a promissory note, subscribed with their own hand writing, bearing date the same day and year, and then and there delivered the said note to the said *Philip* before he became a bankrupt, and thereby jointly and severally promised to pay to the said *Philip* or order, sixteen pounds three shillings and three pence, on demand, value received by the said *William* and *Elizabeth*, and by reason thereof, and by force of the statute in such case made and provided, he the said *William* became liable to pay the said *Philip* the said sum of money contained in the said note, according to the tenor and effect of the said note; and being so liable the said *Philip* afterwards, to wit, on the second day of *August*, in the year of our Lord one thousand seven hundred and twenty six, at *London* aforesaid, in the parish and ward

ward aforesaid, became a bankrupt within the meaning and intent of the said statutes concerning bankrupts, the said sixteen pounds three shillings and three pence in the said note mentioned, or any part thereof, not being paid or satisfied, and that the said *William* afterwards, to wit, on the first day of *August*, one thousand seven hundred and twenty eight, at *London* aforesaid, in the parish and ward aforesaid, in consideration of the premises, undertook and then and there faithfully promised the said *Susannah* and *Thomas*, and one *Matthew Snablin* in his lifetime, now deceased, which said *Matthew Snablin* the said *Susannah* and *Thomas* have survived (they then being assignees of the debts and effects of the said *Philip* being a bankrupt as aforesaid) to pay them the said sum of money contained in the said note, when he should be afterwards thereto required.

AND WHEREAS the said *William*, on the said twenty seventh day of *October*, one thousand seven hundred and twenty (*same count over again for another note exactly the same, repeated down to promise of payment to Snablin and plaintiff.*)

AND WHEREAS the said *Wm.* afterwards, to wit, on the first day of *August*, in the year of our Lord one thousand seven hundred and twenty eight aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, was indebted unto the said *Susannah* and *Thomas*, and the said *Matthew Snablin* in the lifetime of the said *Matthew*, assignees aforesaid, in other sixteen pounds three shillings and three pence, for money by the said *Philip* before that time, and also before he became a bankrupt as aforesaid, lent and advanced to the said *William*, and at his special instance and request; and being so indebted he the said *William* in consideration thereof, afterwards, the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *Susannah*, *Thomas* and *Matthew*, in the lifetime of the said *Matthew*, assignees as aforesaid, to pay him the said last mentioned sum of money when he should be afterwards thereto requested; yet the said *William* not regarding his said several promises and undertakings,
but

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but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Susannah*, *Thomas* and *Matthew* in the lifetime of the said *Matthew*, assignees as aforesaid, and the said *Susannah* and *Thomas* after the death of the said *Matthew* in this particular, hath not yet paid the said several sums of money, or any part, to the said *Susannah*, *Thomas* and *Matthew*, in the lifetime of the said *Matthew*, assignees as aforesaid, or to any of them, or to the said *Susannah* and *Thomas*, or either of them, after the death of the said *Matthew*, (although to do this the said *William* often afterwards, by the said *Susannah*, *Thomas* and *Matthew*, in the lifetime of the said *Matthew*, assignees as aforesaid, and by the said *Susannah* and *Thomas*, after the death of the said *Matthew*, to wit, on the first day of *August*, in the year of our Lord one thousand seven hundred and thirty, at *London* aforesaid, in the parish and ward aforesaid, was requested) but he refused to pay the same to the said *Susannah*, *Thomas* and *Matthew*, in the lifetime of the said *Matthew*, assignees as aforesaid, or to any of them, or to the said *Susannah* or *Thomas*, or either of them, after the death of the said *Matthew*, hath hitherto altogether refused to pay the same to the said *Susannah* and *Thomas*, surviving assignees as aforesaid, to their damage of forty pounds, and therefore they bring their suit, &c.

Spencer versus Jolliffe.

For malicious prosecution.

—To wit. *G. Spencer* complains of *W. Jolliffe* in the custody of the marshal, &c. for this, THAT the said *William*, maliciously devising and craftily intending unjustly to oppress, weary out and impoverish the said *George Spencer*, at the general quarter sessions of the peace of our now sovereign lord the King, held at the castle of *W.* in and for the county of *S.* on *Tuesday* in the week next after the feast of *St. Thomas* the martyr, to wit, the fifteenth day of *July*, in the ninth year of his present Majesty's reign, before *Geo. Bridges*, Esq; *Edw. Heaker*, Esq; &c. and others their fellows, then justices of our said lord the King assigned

signed to keep the peace of our said Lord the King in and for the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the said county, did falsely and maliciously, and without any reasonable or probable cause, procure him the said *George Spencer* to be indicted by the name of *George Spencer* of *New Town* in the *Isle of Wight*, in the county aforesaid, gent for that he the said *George*, on the twenty sixth day of *April*, in the eighth year of the reign of our sovereign lord *George* the second, King of *Great Britain*, with force and arms, at *New Town* aforesaid, in the county aforesaid, in and upon the said *William Jolliffe*, in the peace of God and our lord the King then and there being, did make an assault, and him the said *William Jolliffe* with force and arms did then and there beat, wound and ill treat, so that his life was despaired of, and other injuries to the said *William Jolliffe* with force and arms then and there did, to the great damage of the said *William Jolliffe*, and against the peace of our said lord the King, his crown and dignity; and the said *William Jolliffe* did falsely and maliciously, and without any reasonable or probable cause, prosecute the said indictment against the said *George* until afterwards, to wit, upon the same day and year, at the same general quarter sessions of the peace held at the said *Castle of Winchester*, the said *George* was by a jury of his country, and by judgment of the same court, acquitted of the premisses charged upon him in the said indictment; by reason of which false and malicious prosecution the said *George* hath not only been compelled to undergo great labours and troubles, but also to expend divers great sums of money in defending himself in this behalf, whereby he says he is prejudiced, and hath damage to the value of one hundred pounds, and thereupon he brings his suit.—*Pledges, &c. Plea, Not Guilty.*

Leach versus Lister.

—To wit, *John Leach* complains of *George* For meat,
Lister, otherwise *Leicester*, in custody of the marshal drink, &c.
of

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of the Marshalsea, &c. FOR THAT WHEREAS the said *George* on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty five, at *Portsmouth*, in the county aforesaid, was indebted to the said *John* in ten pounds of lawful money of *Great Britain* for divers goods, wares and merchandizes, by the said *John* to the said *George* before that time sold and delivered; and being so indebted, the said *George* in consideration thereof afterwards, to wit, on the day and year aforesaid, at *Portsmouth* aforesaid, in consideration aforesaid, took upon himself, and then and there faithfully promised, &c. (*as usual for goods sold and delivered.*)

AND ALSO WHEREAS the said *George* afterwards, to wit, on the day and year aforesaid, at *Portsmouth* aforesaid, in the county aforesaid, was indebted to the said *John* in other ten pounds of like lawful money for meat, drink, and other necessaries, by the said *John* for the said *George*, and by his order, and for his use before that time found and provided; and being so indebted the said *George* in consideration thereof afterwards, to wit, on the day and year aforesaid, at *Portsmouth* aforesaid, in the county aforesaid, took upon himself, and then and there faithfully promised the said *John* that he the said *George* would well and truly pay and satisfy to the said *John* the said ten pounds last mentioned when he should afterwards be thereunto required.

AND ALSO WHEREAS the said *George* afterwards, to wit on the day and year aforesaid, at *Portsmouth* aforesaid, in the county aforesaid, in consideration that the said *John* had before that time, at the like special instance and request of the said *George* found and provided for the said *George*, and by his order and for his use, other meat, drink and necessaries, took upon himself, and then and there faithfully promised the said *John* that he the said *George* would well and truly pay and satisfy to the said *John* as much money as he reasonably deserved to have for the said meat, drink and necessaries last mentioned, when he the said *George* should afterwards be thereunto required; and the said *John* avers that he reasonably deserved to have of the said *George* other ten pounds of like law-
ful

ful money for the meat, drink and necessities last mentioned, at the time of the finding and providing thereof, to wit, at *Portsmouth* aforesaid, in the county aforesaid, whereof the said *George* then and there had notice.

AND ALSO WHEREAS the said *George* afterwards, to wit, on the day and year aforesaid, at *Plymouth* aforesaid, in consideration aforesaid, was indebted to the said *John* in other ten pounds of like lawful money for the like sum of money by the said *John* for the said *George*, and at his like special instance and request before that time paid, laid out and expended; and being so indebted the said *George* in consideration thereof afterwards, to wit, on the day and year aforesaid, at *Portsmouth* aforesaid, in the county aforesaid, took upon himself and then and there faithfully promised the said *John* that the said *George* would well and truly pay and satisfy to the said *John* the said ten pounds last mentioned, when he should afterwards be thereunto required.

An infimul computasset for seven pounds, three shillings and eight pence. Conclude generally.

AND the said *George* by *T. L.* his attorney comes and Plea. defends the wrong and injury, when, &c. and as to the said first, second, fourth, fifth and sixth promises and undertakings in the said declaration above mentioned, and also as to the third promise and undertaking in the said declaration also mentioned, as to all the money mentioned in the said third promise and undertaking, except the sum of six pounds, parcel of the said ten pounds in the said third promise and undertaking above-mentioned by him above supposed to be made, he the said *George* saith that he did not take upon himself in manner and form as the said *John* above thereof complains against him, and of this he puts himself upon his country and the said *John* likewise; and as to the said third promise in the said declaration above-mentioned as to the said six pounds, parcel of the said ten pounds in the said third promise in the said declaration above-mentioned by the said *George*, above supposed to be made by the said *George*, saith, that the said *John* ought

ought not to have or maintain his said action thereof against him to recover any further damage against him than the six pounds, because he says that he the said *George* before the time of exhibiting of the said bill of the said *John*, to wit, upon the said first day of *October*, in the said year one thousand seven hundred and thirty five, at *Portsmouth* aforesaid, was ready to pay, and then and there offered to him the said *John* to pay him the said six pounds, and which said six pounds the said *John* then and there refused to accept of him the said *George*, and the said *George* saith, that he hath always from the time of making the said third promise and undertaking hitherto been ready, and yet is ready to pay to the said *John* the said six pounds, and now brings the same into court here ready to be paid to the said *John* if he will accept of the same, and this he is ready to verify, wherefore he prays judgment if the said *John* ought to have or maintain his said action thereof against him to recover any further damage than the said six pounds.

Replication. WHEREUPON the said *John Leach* here in court received of the said *George* the said six pounds, therefore let the said *George* be thereof acquitted, and as to trying the said issue above joined between the said parties aforesaid, let the jurors come, &c.

Judic. pro pl.

R. Draper.

MICHAELMAS TERM, 9 GEO. II.

Prideaux Gwyn *versus* Philips.

For breaking down the banks of watercourse.

Edward Prideaux Gwyn complains of *William Philips*, in custody of the marshal, &c. FOR THAT WHEREAS he the said *Edward Prideaux Gwyn* on the sixteenth day of *February*, in the year of our Lord one thousand seven hundred and thirty four, and before and from thenceforth hitherto was and yet is seised in his demesne as in fee of and in certain closes commonly called and known by the names of *Portway Meadow*, *Nut Close*, *Four Acres*, *Furze Close*, *Great Blacklands*, *Middle Blacklands*, the *Nursery*, the *Lawns Pond Ground* and

and the *Park*; and also of and in one certain pond called the *Great Pond* in the said *Park*, with their appurtenances, in *Thorncombe*, in the county aforesaid.

AND WHEREAS from time beyond the memory of man until the time of the obstruction hereafter mentioned, a certain watercourse did run and flow, and was used and accustomed, and of right ought to run and flow in its right and ancient course from and in a certain close called *Webber's Moor*, in *Thorncombe*, to and into part (that is to say the *South East*) by *South* of the said close called *Portway Meadow*, and from thence into the said other closes and pond of the said *Edward Prideaux Gwyn*, to the great benefit and advantage of the said *Edward* and all other the tenants and occupiers of the same closes and pond for the time being; yet the said *William Philips* knowing the premises, but contriving and maliciously intending to injure the said *Edward Prideaux Gwyn* in this respect, and deprive him of the benefit and advantage of the said watercourse whilst the said *Prideaux Gwyn* was seised of his said closes and pond as aforesaid, to wit, on the said sixteenth day of *February*, in the year of our Lord one thousand seven hundred and thirty four, did maliciously and wrongfully break down a certain fen bank at *Thorncombe* aforesaid, and has continued the same to be broken down from thenceforth until the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty five, and thereby diverted the said watercourse during all that time from and out of its said ancient and wonted course, and away from the said *South East* by *South*, part of the said close called *Portway Meadow*, and also away from the said closes and pond called *Nut Close*, *Four Acres*, *Furze Close*, *Great Blacklands*, *Middle Blacklands*, the *Nursery*, the *Lawns Pond Ground*, the *Park* and *Great Pond* in the said *Park*, whereby the said *Edward Prideaux Gwyn* during all that time lost the use, benefit and advantage of the said watercourse for the watering of his said closes,

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clofes, and filling his faid pond, and the profit and advantage of his faid clofe and pond.

AND WHEREAS the faid *Prideaux Gwyn* on the fixteenth day of *February*, in the faid year of our Lord one thoufand feven hundred and thirty four, and before and from thenceforth hitherto was, and yet is feifed of and in certain other clofes commonly called and known by the names of *Portway Meadow*, *Nut Clofe*, *Four Acres*, *Furze Clofe*, *Great Blacklands*, *Middle Blacklands*, the *Nurfery*, the *Lawns Pond Ground* and the *Park*, of and in one other pond called the *Great Pond*, with their appurtenances in *Thorncombe* aforefaid.

AND WHEREAS from time beyond the memory of man until the time of the obftruction hereafter mentioned, a certain other watercourse did run and flow, and was ufed and accuftomed to run and flow in its right and ancient courfe in and through a certain other clofe called *Greenfield's Higher Meadow*, in *Thorncombe* aforefaid, and from thence into and through another clofe there called *Greenfield's Lower Meadow*, and from thence into a lane called *Portway Lane*, in *Thorncombe* aforefaid, and from thence into the *South Eaft* by *South*, part of the faid laft mentioned clofe of the faid *Edward Prideaux Gwyn*, called *Portway Meadow*, and from thence into the faid other laft mentioned clofes and pond of the faid *Edward Prideaux Gwyn*, called *Nut Clofe*, *Four Acres*, *Furze Clofe*, *Great Blacklands*, *Middle Blacklands*, the *Nurfery*, the *Lawns Pond Ground*, the *Park* and *Great Pond*, to the great benefit and advantage of the faid *Edward* and all other tenants and occupiers of the fame clofes and pond for the time being; yet the faid *Wm. Philips* well knowing the premisses, but contriving and maliciously intending to injure the faid *Edward Prideaux Gwyn* in this refpect, and deprive him of the benefit and advantage of the fame watercourse laft abovementioned, whilft the faid *Edward Gwyn* was feifed of his faid laft mentioned clofes and pond as aforefaid (to wit) on the faid fixteenth day of *February*, in the year of our Lord one thoufand
seven

seven hundred and thirty four, did wrongfully and maliciously break down the bank of the last mentioned watercourse at *Thorncombe* aforesaid, in the said close called *Greenfield's Higher Meadow*, and has continued the same so broken down from thenceforth until the said twenty ninth day of *September*, in the said year of our Lord one thousand seven hundred and thirty five, and thereby during all the time last aforesaid diverted the same watercourse from and out of its said ancient and wonted course, and away from the said *South East* by *South*, part of the said last mentioned closes called *Portway Meadow*, and also away from the said last mentioned closes and pond called *Nut Close*, *Four Acres*, *Furze Close*, *Great Blacklands*, *Middle Blacklands*, the *Nursery*, the *Lawns Pond Ground*, the *Park* and *Great Pond*, whereby the said *Edward Prideaux Gwyn* during all that time lost the use, benefit and advantage of his said last mentioned watercourse, and the profit and advantage of his said last mentioned closes and pond.

AND WHEREAS the said *Edward Prideaux Gwyn* on the said sixteenth day of *February*, in the said year one thousand seven hundred and thirty four, and before and from thenceforth hitherto was, and yet is seised of and in certain other closes called *Portway Meadow*, *Nut Close*, *Four Acres*, *Furze Close*, &c. and of and in one other pond of water called the *Great Pond*, with their appurtenances in *Thorncombe* aforesaid.

AND WHEREAS from time beyond the memory of man until the time of the obstruction hereafter mentioned, a certain other watercourse did run and flow, and was used and accustomed to run and flow in its right and ancient course, in and from a certain other close called *Greenfield's Higher Meadow* in *Thorncombe* aforesaid, unto the *South East* by *South*, part of the said last mentioned close called *Portway Meadow*, and unto the said other last mentioned closes and pond of the said *Edward Prideaux Gwyn*, called *Nut Close*, *Four Acres*, *Furze Close*, *Great Blacklands*, *Middle Blacklands*, the *Nursery*, &c. to the great benefit and advantage of the said

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saïd *Edward* and all other tenants and occupiers of the same closes and pond for the time being; yet the saïd *William Philips* knowing the premisses, but contriving and maliciously intending to injure the saïd *Edward Prideaux Gwyn* also in this respect, and deprive him of the benefit and advantage of the same watercourse last abovementioned which the saïd *Edward Prideaux Gwyn* was seised of, his saïd last mentioned closes and pond as aforesaid (to wit) on the saïd sixteenth day of *February*, in the saïd year of our Lord one thousand seven hundred and thirty four, at *Thorncombe* aforesaid, did wrongfully and maliciously break down a bank of the saïd last mentioned watercourse in *Thorncombe* aforesaid, and has continued the same so broken down from thenceforth until the saïd twenty ninth day of *September*, in the saïd year of our Lord one thousand seven hundred and thirty five, and thereby during all that time hath diverted the same watercourse from and out of its ancient and wonted course, and away from the saïd *South East* by *South*, part of the saïd last mentioned close called *Portway Meadow*, and also away from the saïd last mentioned closes and pond called *Nut Close*, &c. whereby the saïd *Edward Prideaux Gwyn* during all that time lost the use, benefit and advantage of the last mentioned watercourse, and the profit and benefit of the saïd last mentioned closes and pond, to the damage of the saïd *Edward Prideaux Gwyn* one hundred pounds, and thereof, &c.

Defendant pleads not guilty.

Sammarez, administratrix, versus Carly.

By administratrix on note of hand. *Mary de Sammarez*, administratrix of all and singular the goods and chattels, rights and credits which were of *Nicholas de Sammarez*, deceased, complains of *Simon Carly*, in the custody of the marshal of the Marshalsea of our sovereign Lord the King, before the King himself, being for that, to wit, THAT WHEREAS the saïd *Nicholas* in his life time was a person resident and using the trade of merchandize

chandize in the island of *Guernsey*, and the said *Simon* using and exercising the trade of merchandize, and according to the custom of merchants, after the first day of *May*, in the year of our Lord one thousand seven hundred and thirty five, to wit, the second day of *March*, in the year of our Lord one thousand seven hundred and twenty six, at *Ringwood*, in the county of *Southampton*, made a certain note of his in writing, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and thirty days after the date thereof promised to pay to the said *Nicholas* by the name of Master *Nicholas de Sammaréz*, or his order, the sum of twelve pounds Sterling, value received of him, and by reason thereof, and according to the usage and custom of merchants, the said *Simon* became liable to pay unto the said *Nicholas* in his life-time the said sum of twelve pounds in the said note mentioned, and being so as aforesaid liable, the said *Simon* afterwards, on the same day and year last mentioned, at *Ringwood* aforesaid, in consideration thereof, upon himself assumed, and the said *Nicholas* in his life time then and there faithfully promised to pay unto him the said sum of twelve pounds, according to the tenor and effect of the said note.

AND WHEREAS ALSO the said *Simon* afterwards, to wit, on the same day and year last mentioned, at *Ringwood* aforesaid, was indebted to the said *Nicholas* in his life time in the further sum of twelve pounds of lawful money of *Great Britain*, for so much money by the said *Nicholas* in his life time to the said *Simon*, and at his special instance and request before that time lent and advanced, and being so indebted, the said *Simon* afterwards, to wit, the same day and year last mentioned, at *Ringwood* aforesaid, in consideration thereof, took upon himself, and to the said *Nicholas* in his life time then and there faithfully promised to pay unto him the said sum of twelve pounds last mentioned when he the said *Simon* should be afterwards thereto requested.

AND

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AND WHEREAS ALSO the said *Simon* afterwards, to wit, on the day of in the year of our Lord, at *Ringwood* afore said, was indebted to the said *Nicholas* in his life time in the sum of twelve pounds of lawful money of *Great Britain*, for divers goods, wares and merchandizes, (*the common count*) nevertheless the said *Simon* his several promises and undertakings afore said by him in form afore said made, in no wise regarding, but contriving and fraudulently intending the said *Nicholas* in his life time, and the said *Mary* after his death in this behalf craftily and cunningly to deceive and defraud, the afore said several sums of money to the said *Nicholas* in his life time, or to the said *Mary* after the death of the said *Nicholas* (to which said *Mary* administration of all and singular the goods and chattels, rights and credits which were of the said *Nicholas* at the time of his death, hath been in due form of law committed) or either of them hath not paid or satisfied, although &c.

Demurrer.

AND the said *Simon* by *H. M.* his attorney, comes and defends the wrong and injury when, &c. and prays judgment of the said declaration, because he says that the said declaration and the matter therein contained are not sufficient in law for the said *Mary* to have or maintain her said action against him, to which said declaration the said *Simon* hath no need, nor is he obliged by the law of the land to answer, and this he is ready to verify, wherefore for want of a sufficient declaration in this behalf, the said *Simon* prays judgment of the said declaration, and that the same may be quashed, and for cause of demurring in law in this behalf, the said *Simon* according to the form of the statute in such case lately made and provided, shews to the court these causes following, that is to say, that it does not appear when, where, nor by whom administration of all the goods and chattels, rights and credits, which were of the said *Nicholas* at the time of his death was committed to the said *Mary*, nor hath the said *Mary* brought the letters of administration granted

granted her into this court here, and for this that the said declaration is uncertain and wants form.

Non Pros.

R. Draper.

Prowling versus Goddard.

—To wit. *Rowland Prowling* complains of *Michael Goddard*, in the custody of the marshal, &c. On agreement for purchasing of hops.
 in a plea of trespass on the case, for this, THAT WHEREAS upon the twenty third day of *November*, in the year of our Lord one thousand seven hundred and thirty four, at *Bentley*, in the county aforesaid, at the special instance and request of the said *Michael*, it was agreed by and between them the said *Rowland* and *Michael* in manner following, to wit, the said *Michael* for and in consideration of one shilling then paid him by the said *Rowland*, and of one hundred and seven pounds, two shillings to be paid him by the said *Rowland* within ten days after the feast day of *St. Michael* the archangel then next ensuing, sold to the said *Rowland* one ton weight of his the said *Michael's* best hops which the said *Michael* should have grown on the hop grounds of the said *Michael*, and which he then occupied in *Bentley* aforesaid, the then next ensuing year, and which should be of the gathering of his the said *Michael's* best hops then growing, and that the said *Michael* should deliver the same to the said *Rowland* at his the said *Michael's* dwelling house in *Bentley* aforesaid, on or before ten days next before *Michaelmas* day then next ensuing, and that the said hops should be cured in the best manner he the said *Michael* could, and as he usually cured such his best hops, and that in case the said *Michael* should not have a ton weight of the bright or best hops growing in *Bentley* aforesaid, and in manner aforesaid, then all such hops whether bright or brown should be for and towards making up the said ton of hops so sold at and after the rate and price abovementioned, and so in proportion in case there should not be a ton weight thereof grown, and that the said *Michael* should

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should give the said *Rowland* three days notice of weighing the said hops.

AND WHEREAS upon the said twenty third day of *November*, in the said year one thousand seven hundred and thirty four, at *Bentley* aforesaid, in consideration that the said *Rowland*, at the like instance and request of the said *Michael*, had then and there taken upon himself, and faithfully promised the said *Michael* well and truly to perform the said agreement in all things on his part to be performed, he the said *Michael* took upon himself, and then and there faithfully promised the said *Rowland* well and truly to perform the said agreement in all things on his part to be performed; and the said *Rowland* in fact saith, that the said *Michael* in the next ensuing year after the said agreement made as aforesaid, and before the time abovementioned for delivery of the said hops, to wit, upon the first day of *August*, in the year of our Lord one thousand seven hundred and thirty five, had a ton weight of his the said *Michael's* best hops grown on his said hop grounds occupied by him in *Bentley* aforesaid, whereof the said *Rowland* then and there had notice.

AND WHEREAS ALSO afterwards, to wit, upon the said twenty third day of *November*, in the said year of our Lord one thousand seven hundred and thirty four, at *Bentley* aforesaid, in consideration that the said *Rowland*, at the like instance and request of the said *Michael*, had bought of the said *Michael* another ton weight of his the said *Michael's* best hops which the said *Michael* should have grown on his hop grounds in *Bentley* aforesaid, the then next ensuing year, and which should be of the first gathering of his best hops then growing, to be cured by the said *Michael* in the best manner he could, and as he usually cured such his best hops, and to be delivered by the said *Michael* to the said *Rowland* at his the said *Michael's* dwelling house in *Bentley* aforesaid, on or before ten days next before *Michaelmas* day then next ensuing, for one shilling to be paid in hand by the said *Rowland* to the said *Michael*, and one hundred and seven pounds, two shillings,
more

more to be paid by the said *Rowland* to the said *Michael* for the same within ten days after the feast of *St. Michael* the archangel then next ensuing, but if the said *Michael* should not have a ton weight of the bright or best hops grown in *Bentley* aforesaid, in manner aforesaid in the said next ensuing year, then all such hops as should be then grown there, whether bright or brown, should be for and towards making up the said ton of hops last abovementioned, to be sold at and after the rate and price last abovementioned, and so in proportion in case there should not be a ton weight thereof grown, and the said *Michael* to give the said *Rowland* three days notice of weighing the said hops last abovementioned at *Bentley* aforesaid, at the like instance and request of the said *Michael* had paid to the said *Michael* the said shilling last abovementioned, and then and there had taken upon himself, and faithfully promised the said *Michael* to pay him the rest of the said rate last abovementioned, in the manner last abovementioned, he the said *Michael* took upon himself and then and there faithfully promised the said *Rowland* to deliver the said hops last abovementioned to the said *Rowland* in the manner last abovementioned, on or before ten days next before *Michaëmas* day then next ensuing; and the said *Rowland* in fact saith, that the said *Michael* in the then next ensuing year, and before the said time for the delivery of the said hops last abovementioned, upon the first day of *August*, in the year one thousand seven hundred and thirty five, had another ton weight of his the said *Michael's* best hops grown on his said hop grounds in *Bentley* aforesaid, whereof the said *Michael* then and there had notice.

AND WHEREAS ALSO afterwards, to wit, upon the twenty third day of *November*, in the said year one thousand seven hundred and thirty four, at *Bentley* aforesaid, in consideration that the said *Rowland* at the like instance and request of the said *Michael* had bought of the said *Michael* another ton weight of hops which the said *Michael* should have grown on his hop grounds in *Bentley* aforesaid the

then next ensuing year, but if there should not be a ton weight thereof grown therein that year, then so much thereof as should be grown there to be cured and delivered by the said *Michael* to the said *Rowland*, at his the said *Michael*'s dwelling house in *Bentley* aforesaid, on or before ten days next before *Michaelmas* day then next ensuing, and after the rate and price of one hundred and seven pounds, three shillings by the ton, to be paid by the said *Rowland* to the said *Michael* for the same, one shilling thereof in hand, and the residue thereof within ten days after *Michaelmas* day then next ensuing, and the said *Rowland* had at the like instance and request of the said *Michael* then and there paid to the said *Michael* the said one shilling last abovementioned, and had taken upon himself, and faithfully promised the said *Michael* to pay him the rest of the said rate last abovementioned in manner aforesaid, he the said *Michael* took upon himself, and then and there faithfully promised the said *Rowland*, to cure and deliver the said hops last abovementioned to the said *Rowland*, at his the said *Michael*'s said dwelling house in *Bentley* aforesaid, on or before ten days next before *Michaelmas* day then next ensuing; and the said *Rowland* in fact saith, that the said *Michael* in the then next ensuing year, and before the said time for the delivery of the said hops last abovementioned, to wit, upon the first day of *August*, in the said year one thousand seven hundred and thirty five, had another ton weight of hops grown on his said hop grounds at *Bentley* aforesaid, whereof the said *Rowland* then and there had notice.

AND WHEREAS ALSO afterwards, to wit, upon the twenty third day of *November*, in the said year one thousand seven hundred and thirty four, at *Bentley* aforesaid, in consideration that the said *Rowland* at the like instance and request of the said *Michael* had bought of the said *Michael* another ton weight of his the said *Michael*'s best hops of the first gathering which the said *Michael* should have grown in his hop grounds in *Bentley* aforesaid the then next ensuing year, for another large
sum

sum of money, to wit, of one hundred and seven guineas of lawful money of *Great Britain*, to be paid for the same in manner following, and the said *Rowland* at the like instance and request of the said *Michael* had then and there paid to the said *Michael* one shilling part thereof, and taken upon himself, and faithfully promised the said *Michael* to pay him the residue thereof within ten days after *Michaelmas* day then next ensuing, he the said *Michael* took upon himself, and then and there promised the said *Rowland* to deliver to him the said hops last abovementioned at his the said *Michael's* said dwelling house in *Bentley* aforesaid, on or before ten days next before *Michaelmas* day then next ensuing; and the said *Rowland* in fact saith, that the said *Michael* in the then next ensuing year, and before the said time for the delivery of the said hops last abovementioned, to wit, upon the first day of *August*, in the said year one thousand seven hundred and thirty five, had another ton weight of his best hops of the first gathering grown on his said hop grounds at *Bentley* aforesaid, whereof the said *Michael* then and there had notice; yet the said *Michael* not regarding his said several promises and undertakings, but devising and fraudulently intending to deceive and defraud the said *Rowland* in this behalf, hath not yet delivered to the said *Rowland* the said several quantities of hops so sold to him as aforesaid, nor any part thereof (although the said *Michael* afterwards, to wit, upon the tenth day next before *Michaelmas* day, in the said year one thousand seven hundred and thirty five, at *Bentley* aforesaid, was requested by the said *Rowland* so to do, and the said *Rowland* then and there, to wit, at the said dwelling house of the said *Michael* in *Bentley* aforesaid, was ready and willing to have received the same) but the said *Michael* hath hitherto refused, and still doth refuse to deliver the same to him.

AND WHEREAS ALSO the said *Michael* afterwards to wit, upon the same day and year last abovementioned, at *Bentley* aforesaid, was indebted to the said *Rowland* in five pounds of lawful money
of

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of *Great Britain*, for so much money by the said *Michael* before that time had and received to the use of the said *Rowland*, and being so indebted, he the said *Michael* afterwards, to wit, upon the same day and year at *Bentley* aforesaid, in consideration thereof took upon himself, and faithfully promised the said *Rowland* to pay him the said five pounds when he should be afterwards thereunto requested; yet the said *Michael* not regarding his said promise and undertaking last abovementioned, but contriving and fraudulently intending to deceive and defraud the said *Rowland* in this behalf, (although often requested) hath not yet paid to the said *Rowland* the said five pounds, nor any part thereof, but hath hitherto refused, and still doth refuse to pay the same to him, whereby he saith that he is prejudiced and damaged to the value of five hundred pounds, and therefore, &c.

Child versus Raggett.

For words
of a mer-
chant.

—To wit, *Charles Child* complains of *Timothy Raggett*, in the custody of the marshal, &c. FOR THAT WHEREAS the said *Charles* is a good, honest, true and faithful subject of his present Majesty, and as a good, honest, true and faithful subject of his said present Majesty and his predecessors hath always behaved himself from the time of his nativity hitherto, and during all the time aforesaid hath been of a good name, fame, character and conversation, free and unsuspected of cheating or defrauding any of his said Majesty's faithful subjects for all the time aforesaid hath lived and remained, by reason whereof he gained the good will and esteem of all his neighbours and other his said Majesty's faithful subjects.

AND WHEREAS the said *Charles Child* at the time of speaking and publishing the false, feigned, and scandalous words herein aftermentioned, and long before was, and still is a merchant residing, inhabiting and trading at *Gosport*, in the county of *Southampton*, and during all the said time by reason of

of his good name, character and reputation in his said trade, gained an honest and comfortable livelihood, provision, and maintenance for himself and his family, by buying, selling, and lawfully and honestly bargaining and dealing in his said trade; yet the said *Timothy Raggett*, not being ignorant of the premises, but envying the happy state of the said *Charles*, and maliciously devising and intending to deprive the said *Charles* of his good name, fame, character and reputation, and to injure him in his said trade and business, upon the first day of *October*, in the year of our Lord one thousand seven hundred and thirty five, at *Gosport* aforesaid, in the said county of *Southampton*, having discourse with divers of his said Majesty's faithful subjects of and concerning the said *Charles*, and of and concerning his said trade, then and there falsely and maliciously, openly and publicly, in the presence and hearing of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *Charles* and of his said trade, these false, feigned, and scandalous words following, that is to say, he (meaning the said *Charles*) hath cheated me (meaning the said *Timothy*) of fourteen gallons of wine out of a pipe of wine that I (again meaning the said *Timothy*) bought of him, (meaning the said *Charles*) by ordering his cooper (meaning the said *Charles's* cooper) to take out a stave to make it less; and the said *Timothy* of his further malice aforesaid, afterwards, to wit, upon the same day and year, at *Gosport* aforesaid, in the county aforesaid, again having discourse with divers other of his said Majesty's faithful subjects of and concerning the said *Charles*, and of and concerning his said trade, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers other of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published these other, false, feigned, and scandalous words following of him the said *Charles*, and of his said trade, that is to say, he (again meaning the said *Charles*) cheated me (meaning the said *Timothy*) of fourteen gallons of wine out of a pipe
of

of wine that I (again meaning the said *Timothy*) bought of him (again meaning the said *Charles*); and that the said *Timothy* of his further malice aforesaid, afterwards, to wit, upon the same day and year, at *Gosport* aforesaid, in the county aforesaid, again having discourse with divers other of his said Majesty's faithful subjects of and concerning the said *Charles*, and of and concerning his said trade, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers other his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published these other false, feigned, and scandalous words following of him the said *Charles*, and of his said trade, that is to say, he (meaning the said *Charles*) is a vile rascal, a rogue, and a villain; by reason of speaking and publishing which said false, feigned, and scandalous words of the said *Charles*, he the said *Charles* is greatly injured in his good name, fame and reputation, and in his said trade and business, and hath been obliged to undergo great pains and labours, and to expend and lay out great sums of money for the clearing his innocence in this behalf, whereby he says he is prejudiced, and hath damage to the value of five hundred pounds, and thereupon, &c.

R. Draper.

HILARY TERM, 9 GEO. II.

Filkes versus Hopkins.

On the sale
of a gelding.

—To wit. *William Filkes* complains of *Thomas Hopkins*, in the custody of the marshal, &c. for this, THAT WHEREAS the said *William Filkes*, upon the eighteenth day of *April*, in the year of our Lord one thousand seven hundred and thirty five, at *Market Lavington*, in the county aforesaid, had bargained with the said *Thomas Hopkins* to buy a gelding of the said *Thomas Hopkins*, the said *Thomas Hopkins* knowing the said gelding to be moon blind, then and there, by warranting the said gelding

gelding to the said *William Filkes* to be found in all respects, falsely and fraudulently sold the said gelding to the said *William Filkes* for a certain sum of money, to wit, for the sum of seven pounds; whereas in fact the said gelding at the said time of the said warrant and sale thereof was moonblind, to wit, at *Market Lavington* aforesaid, whereby the said *William Filkes* says he is prejudiced, &c.

MICHAELMAS TERM, 9. GEO. II.

Holloway *versus* Langley.

—To wit. *Francis Holloway* complains of *Arnold* On a bill of exchange. *Langley* in the custody of the marshal, &c. FOR THAT WHEREAS the said *Arnold* on the twenty eighth day of *March*, in the year of our Lord one thousand seven hundred and twenty three, at *Portsmouth* in the county aforesaid (he the said *Arnold* then being a person trading, merchandizing, and using commerce at *Portsmouth* aforesaid) according to the usage and custom of merchants made his certain bill of exchange in writing with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and directed the said bill of exchange to one *Nicholas Arnold*, Esq; by which said bill of exchange the said *Arnold Langley* requested the said *Nicholas*, at ten days after the date thereof to pay the said *Francis*, by the name of Mr. *Francis Holloway* or order, the sum of five pounds, for value received, and to place it to the account of him the said *Arnold Langley*; and the said *Francis* in fact saith that afterwards, to wit, on the fourth day of *April*, in the year aforesaid, at *Portsmouth* aforesaid, in the county aforesaid, he the said *Francis* shewed and presented the said bill to the said *Nicholas*, and then and there required him the said *Nicholas* to accept the said bill, which the said *Nicholas* then and there refused to do, or even to pay the said five pounds therein mentioned to the said *Francis*, whereof the said *Arnold* afterwards, to wit, on the said fourth day of *April*, in the year

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year aforesaid, at *Portsmouth* aforesaid, in the county aforesaid, had notice; by reason whereof he the said *Arnold Langley*, according to the usage and custom of merchants, became liable, and is liable to pay the said *Francis* the said five pounds mentioned in the said bill of exchange; and the said *Arnold Langley* being so liable, afterwards, to wit, on the day and year last mentioned, at *Portsmouth* aforesaid, in the county aforesaid, in consideration thereof took upon himself and then and there faithfully promised the said *Francis* to pay the said five pounds to the said *Francis* when he should afterwards be thereunto required.

AND ALSO WHEREAS the said *Arnold Langley* afterwards, to wit, on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty five, at *Portsmouth* aforesaid, in the county aforesaid, was indebted to the said *Francis* in ten pounds of lawful money of *Great Britain*.

(*A common count for money lent.*)

HILARY TERM, 9 GEO. II.

Brice versus Wife.

For freight. — To wit. *William Brice* complains of *Thomas Wife* in the custody of the marshal, &c. for this, THAT WHEREAS upon the thirteenth day of *January*, in the year of our Lord one thousand seven hundred and thirty three, at *Portsmouth* in the county aforesaid, in consideration that the said *William Brice* by *Edward Gregory* and company his factors, at the special instance and request of the said *Thomas*, had then shipped in good order and well conditioned in and upon a certain ship called the *Hopewell*, whereof the said *Thomas* then was master for the then intended voyage, and then riding at anchor at the port of *Bristol*, in the county of the city of *Bristol*, and then bound for *Pool*, *Portsmouth*, and *Southampton*, divers goods and chattels, to wit, two pipes of compound strong waters of him the said *William* of the value of one hundred pounds, and a parcel of sugar of the value of twenty pounds, to be delivered in the like

like good order and well conditioned, at the said *Pool* of *Southampton*, in the county of *Hants* (the danger of the seas only excepted) for a reasonable freight to be paid by the said *William* to the said *Thomas* for the carriage thereof, as customary, with primage and average accustomed, and the said *William* at the like instance of the said *Thomas* had then at *Portsmouth* aforesaid taken upon himself and faithfully promised the said *Thomas* well and truly to pay him the same accordingly, he the said *Thomas* took upon himself, and then and there faithfully promised the said *William* that he the said *Thomas* would well and securely keep and carry the said goods in the said ship from the said port of *Bristol* to the port of *Southampton* aforesaid, and there deliver the same to the said *William* in the like good order and well conditioned (the damage of the seas only excepted); nevertheless the said *Thomas* not regarding his said promise and undertaking, but devising and fraudulently intending to defraud and deceive the said *William* in this behalf, did not safely and securely carry the said goods in the said ship from the said port of *Bristol* to the port of *Southampton* aforesaid, nor there deliver the same to the said *William Brice* in the like good order and well conditioned as the same were shipped on board the said ship, although the danger of the seas did not hinder and prevent him from so doing, but the said *Thomas* so carelessly, negligently and improvidently stowed, placed and disposed of the said goods and chattels in the said ship, and so negligently and carelessly carried the said goods and chattels in the said ship, in the said voyage from the said port of *Bristol* to the port of *Southampton* aforesaid, that for want of due care and management of the said *Thomas* in stowing, keeping and carrying the same, one of the said pipes was staved of seventy eight gallons of the said compound strong waters of the value of seven pounds sixteen shillings, were thereby totally lost, and the said other goods and chattels of him the said *William* then being in the said ship, were thereby greatly damaged and spoiled, and became of little value to the said *William*, to wit, upon the tenth day of *February*, in the year of our Lord
one

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one thousand seven hundred and thirty three, at *Portsmouth*, aforesaid, whereby the said *William* says he is prejudiced, and hath damage to the value of two hundred pounds, and thereupon, &c.

Marks *versus* Silby.

For being
damned as
a surety.

—To wit. *William Marks* complains of *William Silby* in the custody of the marshal, &c. for this, THAT WHEREAS upon the sixth day of *February*, in the year of our Lord one thousand seven hundred and twenty eight, at *Bradford* in the said county, in consideration that the said *William Marks*, at the special instance and request of the said *William Silby*, had then and there become bound jointly and severally with the said *William Silby* and one *Rebecca Silby*, spinster, by one bond under their seals then and there made unto one *William Spender* in the penal sum of forty pounds, with condition that the same should be void upon the said *William Silby*, *Rebecca Silby*, and *William Marks*, or any of them, their or any of their heirs, executors or administrators, paying to the said *William Spender*, his executors, administrators or assigns, the sum of twenty pounds, with lawful interest for the same, on the sixth day of *August* then next ensuing, he the said *William Silby* took upon himself and then and there faithfully promised the said *William Marks* to repay him all such moneys as he the said *William Marks* should then after pay on account of the said bond; and the said *William Marks* in fact saith that he the said *William Marks* afterwards, to wit, upon the twelfth day of *August*, in the year of our Lord one thousand seven hundred and thirty, at *Bradford* aforesaid, paid to the said *William Spender* the sum of ten pounds five shillings and two pence, on account of the said bond, whereof the said *William Silby* afterwards, to wit, upon the same day and year last abovementioned, at *Bradford* aforesaid, had notice.

AND WHEREAS ALSO the said *William Silby* afterwards, to wit, upon the same day and year last above-

abovementioned, at *Bradford*, in the said county, was indebted to the said *William Marks* in forty pounds of lawful money of *Great Britain*, for such a sum of money by him the said *William Marks*, at the special instance and request of the said *William Silby*, and for his use before that time paid, laid out and expended; and being so indebted he the said *William Silby* afterwards, to wit, upon the same day and year last abovementioned, at *Bradford* aforesaid, in consideration thereof took upon himself, and then and there faithfully promised to pay him the said sum of money last abovementioned, when afterwards he should be thereunto required.

Another count for money had and received: concludes as usual.

AND the said *William Silby* comes by *A. B.* his Plea. attorney, and defends the wrong and injury, when, &c. and saith that the said *William Marks* ought not to have or maintain his said action against him, because as to the second and third promises and assumptions in the said declaration abovementioned, he saith that he did not assume upon himself in manner and form as the said *William Marks* hath above declared against him, and of this he putteth himself upon the country, and the said *William Marks* likewise; and as to the first promise and assumption in the said declaration mentioned, he the said *William Silby* saith that after the time of making the said promise and assumption, and after the payment of the said ten pounds five shillings and two pence by the said *William Marks* unto the said *William Spender*, on account of the said bond in the said declaration mentioned, and before the day of exhibiting the said bill of the said *William Marks*, to wit, on the seventh day of *October*, in the year of our Lord one thousand seven hundred and thirty four, at *Bradford* aforesaid, in the county aforesaid, it was mutually accorded and agreed by and between the said *William Silby* and the said *William Marks* that he the said *William Silby* should pay unto the said *William Marks* twelve pounds ten shillings of lawful money of *Great Britain*, by forty shillings yearly and every year, if it should be so demanded, until the said twelve pounds
ten

ten shillings should be fully paid in satisfaction of the said ten pounds five shillings and two pence so paid by the said *William Marks* as aforesaid, and the said *William Marks* then and there accorded and agreed to and with the said *William Silby* to accept such payments in satisfaction of the said ten pounds five shillings and two pence so paid by him as aforesaid; and the said *William Silby* in fact saith that at the expiration of one year next after making the said accord, he the said *William Silby* paid unto the said *William Marks* forty shillings pursuant to the said accord and agreement, to wit, at *Bradford* aforesaid, which said forty shillings the said *William Marks* then and there accepted of him the said *William Silby*, in pursuance of the same accord; and the said *William Silby* further saith that no demand of any quarterly payment of ten shillings hath been at any time made by the said *William Marks* since the making of the said accord, and that a quarter of a year was not lapsed or incurred between the time of payment of the said forty shillings and the day of exhibiting the said bill of the said *William Marks*, and this he is ready to verify, wherefore he prayeth judgment if the said *William Marks* ought to have or maintaint his said action against him.

J. Belfield.

Replication.

AND the said *William Marks*, as to the said plea of him the said *William Silby*, as to the first promise and undertaking in the said declaration mentioned by him made above, pleaded in bar, saith, that by any thing in the said plea above alledged he ought not to be barred from having his said action thereof against him, because protesting that the said *William Silby* did not pay unto the said *William Marks* the sum of forty shillings in the said plea mentioned, pursuant to the said accord and agreement in the said plea mentioned, protesting also that he the said *William Marks* did not accept of the said *William Silby* the said forty shillings, pursuant to the said accord, as in the said plea is above alledged for plea in this behalf, the said *William Marks* saith that no such accord and agreement was had and made by and between the said *William Marks* and the said *William Silby*, as the said *William Silby* hath above by his pleading alledged; and

and this he prays may be enquired of by the country ;
and the said *William Silby* likewise. THEREFORE, &c.
R. Draper.

Franklin versus Atwood.

— To wit. *Richard Franklin* complains of *Richard Atwood* ^{*Indebitatus*} in the custody of the marshal, &c for this, ^{*assumpsit.*}
THAT WHEREAS upon the twenty third day of *September*, in the year of our Lord one thousand seven hundred and thirty one, at the parish of *Fareham*, in the county aforesaid, in consideration and that the said *Richard Franklin*, at the special instance and request of the said *Richard Atwood*, for the preventing a suit at law, had agreed with *Thomas Atwood*, father of the said *Richard Atwood*, for the sum of twenty pounds, to be paid by the said *Richard Franklin*, for the purchase of a certain house with the appurtenances thereto belonging, being built on the waste of the manor of *Cam* alias *Cambisloes* then in the possession of the said *Richard Atwood's* said father, situate at *Blackbrook*, in the parish of *Fareham* aforesaid, and at the like instance and request of the said *Richard Atwood* had then and there paid to the said *Richard Atwood* the said twenty pounds, being the consideration money for the said purchase for the use of his said father, he the said *Richard Atwood* then and there acknowledged to have then received of the said *Richard Franklin* the said twenty pounds, being the consideration money abovementioned for the use of his said father, and then and there took upon himself and faithfully promised the said *Richard Franklin* to pay him the sum of forty pounds if either *Thomas Atwood* his said father, or the said *Richard Atwood* should molest or trouble the said *Richard Franklin*, or his heirs or assigns, in the quiet possession of the same, and that he would warrant the same against all persons claiming from or under his said father or him ; yet the said *Richard Atwood* not regarding his said promise and undertaking, but devising and fraudulently intending to deceive and defraud the said *Richard Franklin* in this behalf,

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behalf, afterwards, to wit, upon the first day of *October*, in the year of our Lord one thousand seven hundred and thirty three, at the parish of *Fareham* aforesaid, entered into the said house, with the appurtenances, against the will of the said *Richard Franklin*, and without his consent, and then and there molested and troubled him in his quiet possession of the same, and expelled and removed him from his possession and occupation thereof, and hath ever since withheld the same from him, and hath not yet paid to the said *Richard Franklin* the said forty pounds, nor any part thereof (although the said *Richard Atwood* afterwards, to wit, upon the same day and year last abovementioned, at the parish aforesaid, and often afterwards was requested by the said *Richard Franklin* so to do) but hath hitherto refused, and still doth refuse to pay the same to him.

AND WHEREAS ALSO the said *Richard Atwood* afterwards, to wit, upon the same day and year last mentioned, at *Fareham* aforesaid, in the county aforesaid was indebted to the said *Richard Franklin* in other forty pounds of lawful money of *Great Britain*, for such a sum of money by him the said *Richard Atwood* to the use of the said *Franklin* before that time had and received; and being so indebted, &c. to the end of count.

EASTER TERM, 9 GEO. II.

Smith versus Harris.

Against a
common
carrier for
not deliver-
ing goods.

—To wit. *Edward Smith* complains against *Timothy Harris*, *John Payne*, and *Robert Robins*, in custody of the marshal, &c. for this, THAT WHEREAS the said *Timothy*, *John* and *Robert*, upon the seventeenth day of *June*, in the year of our Lord one thousand seven hundred and thirty four, and long before were, and ever since have been, and still are common carriers of goods and chattels, and for all the time aforesaid have been used and accustomed to carry the goods and chattels of any person who should require such carriage, from a certain inn called the *Bell*

Bell Inn, in the parish of *St. Clements Danes*, in the county of *Middlesex* aforesaid, to *Salisbury* in the county of *Wilts*, for their profit and hire.

AND WHEREAS, according to the law and custom of this realm, every common carrier of goods and chattels, who receive the goods and chattels of any persons so to carry, ought to carry the same safely and securely, so that in default of such carrier, or his servant, no damage or loss should happen to the same, or to the owner thereof.

AND WHEREAS the said *Edward*, upon the same day and year abovementioned, was possessed of the goods and chattels following, that is to say, of one new cloth coat with plate buttons, two pair of shoes, a pair of silk stockings, a new hat, a bob wig, fifty promissory notes for payment of money, and fifty bills of exchange for payment of money, to the value of six hundred pounds, as of his own proper goods and chattels, and the said *Edward* being so possessed thereof, upon the same day and year abovementioned, at the parish of *St. Clements Danes* aforesaid, in the said inn there delivered the said goods and chattels to the said *Timothy*, *John* and *Robert* (they the said *Timothy*, *John* and *Robert* then and there being common carriers as aforesaid) to be by them carried safely and securely for the said *Edward* from the said inn, in the parish of *St. Clements Danes* aforesaid, to *Salisbury* aforesaid, in the county of *Wilts* aforesaid, for a reasonable price to be paid by the said *Edward* to the said *Timothy*, *John* and *Robert* for the same; and the said *Timothy*, *John* and *Robert* then and there had and received the same goods and chattels from the said *Edward*, and then and there undertook the carriage of the said goods and chattels as aforesaid; yet the said *Timothy*, *John* and *Robert* not regarding the premisses, but unjustly devising to prejudice the said *Edward* in this behalf, so carelessly and negligently kept and carried the said goods and chattels, that the same by the neglect and carelessness of the said *Timothy*, *John* and *Robert* afterwards, to wit, upon the eighteenth day of *June*, in the year aforesaid, at the parish aforesaid, were lost; and the said *Timothy*, *John* and *Robert*, although
R afterwards,

afterwards, to wit, upon the twentieth day of *June*, in the same year, and often afterwards, at the parish aforesaid, by him the said *Edward* were requested to deliver the same goods and chattels to him, have hitherto refused, and still do refuse to deliver the same to him, whereby he says he is prejudiced, and hath damage to the value of six hundred pounds, and thereupon, &c.

R. Draper.

Carey versus Barnes.

For use and
occupation.

—To wit. *Richard Carey* complains of *Caleb Barnes* in custody of the marshal, &c. in a plea of trespass on the case, for this, THAT WHEREAS upon the twenty ninth day of *September*, in the year of our Lord at *Portsea*, in the county aforesaid, in consideration that the said *Richard*, at the special instance and request of the said *Caleb*, had taken and hired of the said *Caleb* a certain messuage with the appurtenances, situate in *Portsea* aforesaid, with the liberty and privilege of brewing in a certain brewhouse of the said *Caleb* in *Portsea* aforesaid, and the use of a furnace of the said *Caleb* there, and also of a watercourse in *Portsea* aforesaid, and also the liberty and privilege of drawing water from a pump of the said *Caleb* in *Portsea* aforesaid, for the commodious use, occupation and enjoyment of the said messuage, with the appurtenances, to have and to hold the same to the said *Richard* for a term of years, to wit, from thence from year to year as long as both the said parties should please, at and under a certain yearly rent, to wit, the rent of three pounds by the year, payable quarterly, at the four most usual feasts or days of payment in the year, by the said *Richard* to the said *Caleb* for the same; and the said *Richard* had then and there, at the like instance and request of the said *Caleb*, taken upon himself and faithfully promised the said *Caleb* to pay him the said rent, accordingly he the said *Caleb* took upon himself and then and there faithfully promised the said *Richard* that he the said *Richard* as long as he should hold the said messuage

messuage of the said *Caleb* under the said demise, should have and enjoy the several liberties and privileges aforesaid, without the interruption, hindrance or denial of the said *Caleb*; and the said *Richard* in fact saith that he the said *Richard* from the commencement of the said demise hitherto hath held the said messuage of the said *Caleb* under the said demise; yet the said *Caleb* not regarding his said several promises and undertakings, but devising and fraudulently intending to deceive, defraud and injure the said *Richard* in this behalf, afterwards, and during the said *Richard*'s holding the said messuage aforesaid, to wit, upon the first day of *April*, in the year of our Lord one thousand seven hundred and thirty three, and from thence continually hitherto, hath obstructed and hindered the said *Richard* from the liberty and privilege of brewing in the said brewhouse, and from the use of the said furnace and watercourse, and from the liberty and privilege of drawing water from the said pump, for the use, occupation and enjoyment of his said messuage, with the appurtenances, by reason whereof the said *Richard* during the said time last aforesaid, hath been put to great trouble and expences in procuring conveniences elsewhere for brewing, and in purchasing and procuring water elsewhere for the use and occupation and enjoyment of his said messuage, with the appurtenances, whereby he says that he is prejudiced and damaged to the value of twenty pounds, and therefore he brings his suit. *Pledges, &c.*

Pratt versus Crofs.

—To wit. *Henry Pratt*, gent. complains of *Thomas Crofs* and *Robert Rice* in custody of the marshal, For removing bays. &c. for this, THAT WHEREAS the said *Henry* upon the tenth day of *February*, in the year of our Lord one thousand seven hundred and thirty five, and long before was, and ever since hath been, and still is possessed of and in a certain close of meadow called *Westerm Meadow*, lying and being in the parish of *Thurlaxton*, in the county aforesaid, and the said *Henry* during all the time aforesaid, until the diversion and obstruction

DECLARATIONS, PLEADINGS, &c.

herein after mentioned, of right has, and had been used and accustomed to have, and still of right ought to have the use and benefit of a certain water course, which time out of mind had run and flowed, and had been used and accustomed, and of right ought to run and flow in its right and ancient course in and from a certain close called *Baker's Mead*, in the parish aforesaid, into and through the King's highway, in the parish aforesaid, and from thence into and in the said close of meadow of the said *Henry* every year, at all times of the year, for the watering and improvement of the said *Henry's* close of meadow aforesaid; yet the said *Thomas* and *Robert* well knowing the premisses, but devising and maliciously intending to wrong and injure the said *Henry*, and deprive him of the benefit, of the said watercourse, and profits of his said close of meadow, afterwards, to wit, upon the same day and year, at the parish aforesaid, in the said King's highway, there wrongfully dug up and removed certain bays, to wit, two bays, then being there for the direction and guidance of the said watercourse into the said close of meadow of the said *Henry*, and thereby diverted the said watercourse from the said close of meadow of the said *Henry*, and from and out of its said right and ancient course, and obstructed and hindered it from running and flowing into the said close of meadow of the said *Henry* as it ought to have done, and from thence continually hitherto have kept and continued the same so diverted and obstructed as aforesaid, whereby the said *Henry* during all the said time last aforesaid, hath wholly lost the use and benefit of the said watercourse, and profits of his said close of meadow, whereby he saith that he is prejudiced and damaged to the value of twenty pounds, and therefore he brings his suit. *Pledges, &c.*

Russel versus Dunbar.

On a parole agreement. —To wit. *Elizabeth Russel* complains of *Benjamin Dunbar* in the custody of the marshal, &c. in a plea of trespass on the case, for this, THAT WHEREAS upon

upon the nineteenth day of *February*, in the year of our Lord one thousand seven hundred and thirty five, at *Bedford* in the county aforesaid, at the special instance and request of the said *Benjamin*, it was agreed by and between the said *Elizabeth* and the said *Benjamin*, that the said *Benjamin* should take of and buy of the said *Elizabeth* all the stock of goods and utensils for brewing, and whatsoever else was mentioned in the inventory or schedule of goods which the said *Elizabeth* bought of Mr. *John Norris*, which goods were then standing at the sign of the *Crown*, in the *Ford* in the county aforesaid, at the same price that she the said *Elizabeth* (*words of the agreement*) agreed for and paid to the said *John Norris*; but if any thing had been since damaged the said *Elizabeth* should allow the said *Benjamin* for it, and if any thing had been amended and improved, the said *Benjamin* should allow the said *Elizabeth* for it; and further, that the said *Benjamin* should pay the said *Elizabeth* five pounds for the parcel of hay which was the product of her meadow, and that the said *Benjamin* should permit the said *Elizabeth* and her family to dwell rent free for one quarter of a year, and to have the use of the two chambers which were over the shop and cellar after the said *Benjamin* should have taken possession and entered upon the premises at the *Crown* inn aforesaid.

AND WHEREAS upon the same day and year, at *Bedford* aforesaid, in consideration that the said *Elizabeth*, at the like instance and request of the said *Benjamin*, had then and there taken upon herself and faithfully promised to the said *Benjamin* well and truly to perform the said agreement in all things on her part to be performed, he the said *Benjamin* took upon himself and then and there faithfully promised the said *Elizabeth* well and truly to perform the said agreement in all things on his part to be performed; and the said *Elizabeth* in fact saith that she from the time of making the said agreement hitherto hath been ready and willing to deliver, and afterwards, to wit, upon the same day and year, at *Bedford* aforesaid, and often afterwards, offered to the said *Benjamin* to deliver to him

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him the said stock of goods and utensils for brewing and all other goods mentioned in the said inventory, and which were then standing at the sign of the *Crown* aforesaid, at the same price that the said *Elizabeth* agreed for and paid to the said *John Norris* for the same, to wit, for the price of sixty three pounds five shillings and nine pence, and if any thing had been since damaged to allow the said *Benjamin* for it; yet the said *Benjamin* not regarding his said promise and undertaking, but devising and fraudulently intending to deceive and defraud the said *Elizabeth* in this behalf, hath not yet taken of or from the said *Elizabeth* the said stock of goods and utensils for brewing, and other goods mentioned in the said inventory, nor any part thereof, nor paid to the said *Elizabeth* the said five pounds for the said parcel of hay, nor any part thereof (although the said *Benjamin* afterwards, to wit, upon the same day and year, and often afterwards, at *Bedford* aforesaid, was requested by the said *Elizabeth* so to do) but hath hitherto refused, and still doth refuse so to do.

AND WHEREAS (*a quantum valebant* for goods sold.)

TRINITY TERM, 10 GEO. II.

Tilbury versus Hunt.

On parole
evidence.

—To wit. *Thomas Tilbury* complains of *James Hunt*, Esq; in the custody of the marshal, &c. for this, THAT WHEREAS *Richard Edgecombe*, Esq; upon the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty, and long before, was seised of and in a certain close called *Charles Down*, and another close called the *Bakelands*, with the appurtenances, lying and being in the parish of *Stephenton*, in the county aforesaid, in his demesne as of fee, and being so seised thereof the said *Richard Edgecombe* afterwards, to wit, upon the same day and year abovementioned, at *Basingstoke* aforesaid, demised the same closes, with
the

the appurtenances, unto the said *Thomas Tilbury*, to have and to hold the same to the said *Thomas Tilbury* from thenceforth so long as both the parties should please; by virtue whereof the said *Thomas Tilbury* entered into the said closes, with the appurtenances, and was and still is possessed thereof, which said closes lye, and during all the time aforesaid, and also time out of mind have lain contiguous and next adjacent to a certain close of the said *James Hunt*, called the *Middle Field*, otherwise the *Middle ground*, with the appurtenances lying and being in *Mitcheldever*, in the county aforesaid; and the said *James*, and all others the tenants and occupiers of the said close called the *Middle Field*, otherwise the *Middle Ground*, with the appurtenances for the time being, whereof the memory of man is not to the contrary, have from time to time made, repaired and maintained, and been used and accustomed, and of right ought to make, repair and maintain the hedges and fences between the said close of him the said *Thomas Tilbury*, called the *Bakeland*, and the said close of him the said *James Hunt*, as often as there had been occasion; yet the said *James Hunt* not regarding the premisses, but devising and maliciously intending to injure and damage the said *Thomas Tilbury* in this behalf, afterwards, to wit, upon the first day of *March*, in the year of our Lord one thousand seven hundred and thirty five, and continually from thence hitherto hath permitted and suffered the said hedges and fences between the close of him the said *Thomas Tilbury*, called the *Bakelands*, and the said close of him the said *James Hunt*, to be broken down and in decay for want of reparation and amendment thereof, and during all the time aforesaid hath not repaired nor amended the same, but hath neglected so to do, by reason whereof divers of the said *Thomas Tilbury's*, to wit, horses, oxen, cows, pigs, sheep, going and feeding in his said close called the *Bakelands*, have from time to time during the said time last above-mentioned, through defects of the said hedges and fences, escaped out of the said close called the *Bakelands*, in the said close of the said *James*, and from thence into the said other close of the said *Thomas* called

called *Charles Down*, and eat up, trod down, and consumed his grass there growing, to the value of twenty pounds, and done damage to him there, whereby he saith that he is prejudiced, and damaged to the value of forty pounds, and thereupon he brings his suit. *Pledges, &c.*
R. Draper.

MICHAELMAS TERM, 10 GEO. II.

Protheroe versus Street.

For words.

——To wit. *John Protheroe* complains of *Amey Street*, widow, in custody of the marshal, &c. for this, THAT WHEREAS the said *John* is a good, true, honest and faithful subject of his present Majesty, and as a good, true honest and faithful subject of his said present Majesty and his predecessors, hath always behaved himself from the time of his nativity hitherto, and during all the time aforesaid hath been of a good name, fame, credit and reputation, and by reason thereof not undeservedly gained the affection and esteem of all his neighbours and other his Majesty's subjects with whom he had any conversation.

AND WHEREAS ALSO the said *John*, at the times of speaking and publishing the words hereinafter mentioned, and long before, used and exercised, and still doth use and exercise, the art, trade and mystery of a sailmaker, to wit, at *London* aforesaid, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, and during all the time aforesaid hath been there employed by divers liege subjects of his said Majesty and his predecessors, merchants and captains of ships, to make sails for ships and other vessels, and hath always dealt honestly and justly in his said trade and business, and by reason thereof gained credit in his said trade, and comfortable subsistence for himself and his family, and from time to time during all the time aforesaid paid and discharged all, and all manner of debts due and owing from him to any of his said Majesty's faithful subjects with whom he had any dealings; yet the said *Amey Street* not being ignorant of the premises, but maliciously devising and intending

intending to injure the said *John Protheroe* in his good name, fame and reputation, trade and business, and to deprive him of the means of gaining a livelihood for himself and his family, upon the fourteenth day of *December*, in the year of our Lord one thousand seven hundred and thirty five, at *London* aforesaid, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, falsely and maliciously, openly and publicly, in the presence and hearing of divers of his said Majesty's faithful subjects, spoke, uttered with a loud voice, pronounced and published of him the said *John Protheroe*, and of his said trade, these false, feigned and scandalous words following, that is to say, *Protheroe* (meaning the said *John Protheroe* the now plaintiff) is run away, and will never come back again; and the said *Amey Street*, of her further malice aforesaid towards the said *John Protheroe*, afterwards, to wit, upon the same day and year abovementioned, at *London* aforesaid, in the parish and ward aforesaid, falsely and maliciously, openly and publicly, in the presence and hearing of divers other of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *John Protheroe*, and of his said trade, these other false, feigned and scandalous words following, that is to say, he (again meaning the said *John Protheroe*) is run away, and will never come back again; and the said *Amey Street*, of her further malice aforesaid towards the said *John Protheroe*, afterwards, to wit, upon the same day and year abovementioned, at *London* aforesaid, in the parish and ward aforesaid, having some discourse with one *George Olive* of and concerning the said *John Protheroe*, of and concerning his said trade, falsely and maliciously, openly and publicly, in the presence and hearing of divers other his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *John Protheroe*, and of his said trade, these other false, feigned and scandalous words following, that is to say, I (meaning the said *Amey Street* the now defendant) am sure *Protheroe* (meaning *John Protheroe* the now plaintiff) is gone to *Guernsey*, and will not come back again, and if you
(meaning

(meaning the said *George Olive*) don't remove your sails they will be seized for his debts (meaning the said *John Protheroe's* debts); and if you (again meaning the said *George Olive*) will put them into my house (meaning the said *Amey Street's* house) they will be safe; and the said *Amey Street*, of her further malice aforesaid towards the said *John Protheroe*, afterwards, to wit, upon the same day and year abovementioned, at *London* aforesaid, in the parish and ward aforesaid, having other discourse with one *Robert Tite* of and concerning the said *John Protheroe*, and of and concerning his said trade, falsely and maliciously, openly and publicly, in the presence and hearing of divers other of his said Majesty's faithful subjects, spoke and uttered, and with a loud voice pronounced and published of him the said *John Protheroe*, and of his said trade, these other false, feigned and scandalous words following, that is to say, I am sure he (meaning the said *John Protheroe*) is gone to *Guernsey*, and will not come back again, and if you (meaning the said *Robert Tite*) don't remove your brother's sails they will be seized for his debts (meaning the said *John Protheroe's* debts); and if you (again meaning the said *Robert Tite*) will put them into my house (meaning the said *Amey Street's* house) they will be safe; and the said *Amey Street*, of her further malice aforesaid towards the said *John Protheroe*, afterwards, to wit, upon the same day and year abovementioned, at *London* aforesaid, in the parish and ward aforesaid, having other discourse with one *John Giles* of and concerning the said *John Protheroe*, and of and concerning his said trade, falsely and maliciously, openly and publicly, in the presence and hearing of divers other of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *John Protheroe* and of his said trade, these other false, feigned and scandalous words following, that is to say, if you (meaning the said *John Giles*) trust *Protheroe* (meaning the said *John Protheroe*) with your goods, you (again meaning the said *John Giles*) will never be paid for them; and I (meaning the said *Amey Street*) wonder you (meaning the said *John Giles*) will
trust

trust him (meaning the said *John Protheroe*) with any more goods, for I (meaning the said *Amey Street*) am sure he (meaning the said *John Protheroe*) will soon run away; and the said *Amey Street*, of her further malice aforesaid towards the said *John Protheroe*, afterwards, to wit, upon the same day and year abovementioned, at London aforesaid, in the parish and ward aforesaid, having other discourse with one *John Silly* of and concerning the said *John Protheroe*, and of and concerning his said trade, and then and there taking a shilling out of her pocket, and throwing it on the floor, falsely and maliciously, openly and publicly, in the presence and hearing of divers other of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *John Protheroe*, and of his said trade, these other false, feigned and scandalous words following, that is to say, I (meaning the said *Amey Street*) wonder you (meaning the said *John Silly*) deal with *Protheroe* (meaning the said *John Protheroe* the now plaintiff) for if you (meaning the said *John Silly*) do not send for your goods again, I (meaning the said *Amey Street*) will not give you (meaning the said *John Silly*) that (meaning the said shilling) for them; by reason of the speaking, pronouncing and publishing of which said several false, feigned and scandalous words, the said *John Protheroe* is not only greatly injured in his good name, fame, reputation, trade and business, but *John Giles* and *John Silly*, and divers other of his said Majesty's liege subjects, who before that time had been used and accustomed to deal with the said *John Protheroe* in his said trade, and to give him credit for divers large sums of money in the way of his said trade, have altogether refused, and still do refuse to have any dealings with him, or to give him any credit in the way of his trade; and also one *John Morris*, then a creditor of the said *John Protheroe*, by reason of the publishing the said scandalous words, arrested the said *John Protheroe* for his debt; and the said *John Protheroe* hath been obliged to undergo great labours and pains, and to lay out and expend divers large sums of money to clear up his innocence, and maintain and support his credit

credit in his said trade, whereby he says he is prejudiced, and hath damage to the value of three hundred pounds, and thereupon he brings his suit, &c.

Cleeves and another, versus Rose.

Onan agreement.

The agreement.

———To wit. *Robert Cleeves* and *William Cleeves* complain of *Benjamin Rose*, in custody of the marshal, &c. in a plea of trespass on the case for this, THAT WHEREAS upon the twenty first day of *February*, in the year of our Lord one thousand seven hundred and thirty five, at *Bridport*, in the said county, at the special instance and request of the said *Benjamin*, it was agreed by and between the said *Robert* and *William*, and the said *Benjamin* and *John Andrew*, and *John Silver*, in manner following, that is to say, *They the said Benjamin, and John Andrew shipped themselves with the said Robert and William to serve them the then ensuing summer on the cod fishery on the shore, that is to say, the one third part of what fish and oil they might catch, and for their one third part of fish at eight shillings by the quintal good and bad, for which the said Robert and William did oblige themselves to give them the amount thereof in good bills of exchange, as also for their one third part of oil, the price that should govern at St. Peters, and that if any one of the said Robert and William's vessels should go on the banks, then the said crew should proceed in her, and have five pounds, two shillings and sixpence for every one thousand of fish they should catch there, the said Robert and William to give them their passage out and home, with five pounds each to bring their cloaths, and after they should be sent for by the said Robert and William they should be maintained at the charges of the said Robert and William, if they should get a fourth man the said Robert and William obliged themselves to give him his passage out and home, to the true performance of which the said Benjamin, John Andrew and John Silver, did bind themselves, under the penal sum of fifty pounds.*

AND

AND WHEREAS upon the same day and year, at *Bridport* aforesaid, in consideration that the said *Robert* and *William*, at the like instance and request of the said *Benjamin*, had then and there taken upon themselves, and faithfully promised to perform the said agreement in all things on their parts to be performed, he the said *Benjamin* took upon himself, and then and there faithfully promised the said *Robert* and *William* to perform the said agreement in all things on his part to be performed; and although the said *John Andrew* and *John Silver* did afterwards enter into the said service of the said *Robert* and *William*, and go upon the said voyage on the said cod fishery according to the said agreement, yet the said *Benjamin* not regarding his said promise and undertaking, but devising and fraudulently intending to deceive and defraud the said *Robert* and *William* in this behalf, did not enter upon the said service to serve the said *Robert* and *William* the next ensuing summer on the cod fishery, according to his said promise and undertaking, but afterwards, to wit, on the first day of *March*, in the year aforesaid, at *Bridport* aforesaid, and from thence continually hitherto, hath neglected and refused to serve them the said *Robert* and *William* the then next ensuing summer on the cod fishery as aforesaid (although the said *Benjamin* upon the same day and year last abovementioned, and often afterwards at *Bridport* aforesaid, was requested by the said *Robert* and *William* so to do).

AND WHEREAS ALSO afterwards, to wit, upon the said twenty first day of *February*, in the said year one thousand seven hundred and thirty five, at *Bridport* aforesaid, in consideration that the said *Robert* and *William*, at the like instance and request of the said *Benjamin*, had hired the said *Benjamin* to serve them in another voyage to be performed on the cod fishery, for a reasonable reward to be paid him by them for the same, and the said *Robert*, and *William* had then and there taken upon themselves, and faithfully promised the said *Benjamin* to pay him the said reward, he the said *Benjamin* took upon himself, and then and there faithfully promised the
said

said *Robert* and *William* to enter into the said service when required, and to serve them in the said voyage last abovementioned; yet the said *Benjamin* not regarding his said promise and undertaking last abovementioned, but devising and fraudulently intending to deceive and defraud the said *Robert* and *William* in this behalf, did not enter into the said service last abovementioned (although the said *Benjamin* afterwards, to wit, upon the said first day of *March*, in the said year one thousand seven hundred and thirty five, and often afterwards, at *Bridport* aforesaid, was requested by the said *Robert* and *William* so to do) nor hath he served them in the said voyage last mentioned, but then and there, and from thence continually afterwards neglected and refused so to do, whereby they say that they are injured and damaged to the value of fifty pounds, and therefore they bring their suit, &c.

. *Rooke versus Toomer.*

For indictment
ing plaintiff.

———To wit. *Henry Rooke* complains of *Richard Toomer*, in the custody of the marshal, &c. in a plea of trespass on the case, for this, THAT WHEREAS the said *Henry* is a good, true, faithful and honest subject of our sovereign lord the present King, and as such a good, true, faithful and honest subject of the said lord the King, and his predecessors, hath always from his birth hitherto behaved and demeaned himself, and always hath been held, esteemed, reputed and taken to be of good name, fame, credit and reputation among all his neighbours and other faithful subjects of the said lord the King and his predecessors, and hath always hitherto lived free and unblemished from and wholly unsuspected of all kinds of theft, felony, fraud, deceit, cheating, and all other such heinous crimes, by reason whereof he not undeservedly gained the good will and esteem of all his neighbours and others to whom he was known.

AND WHEREAS the said *Henry* in his own right, and one *William Plumby* and one *Roger Plumby*, as
servants

servants of the said *Henry*, and by his order, upon the twenty fifth day of *September*, in the ninth year of the reign of our said lord the now King, at *Fordingbridge*, in the county of *Southampton*, took and drove away three pigs of the said *Henry's* then found there, which said three pigs the said *Richard Toomer* had then lately bargained and sold to the said *Henry*, to wit, at *Fordingbridge* aforesaid; yet the said *Richard Toomer* well knowing the premisses, but devising and maliciously intending to hurt and prejudice the said *Henry* in his good name, fame and reputation, and unjustly to oppress, harass and impoverish him under colour of process of law, and put him in danger of undergoing corporal punishment, and of forfeiting all his goods and chattels, afterwards, to wit, at the session of the said lord the King of *Oyer and Terminer*, held at the *Castle of Winton*, in and for the said county, on *Wednesday* the third day of *March*, in the ninth year aforesaid, before *James Reynolds*, Esq; then lord chief baron of his Majesty's court of *Exchequer*, and *Sir Francis Page*, knight, then one of the justices appointed to hold pleas before the King himself and other their associates, then justices of the said lord the King in that behalf assigned, maliciously, under the pretence and colour aforesaid, caused and procured the said *Henry*, by the name of *Henry Rooke*, of *Bremore*, in the said county, yeoman, together with the said *William Plumby* and *Roger Plumby*, to be falsely indicted, for that the said *William*, *Roger* and *Henry*, upon the twenty fifth day of *September*, in the ninth year of the reign of our sovereign lord *George* the Second, by the grace of God of *Great Britain*, *France* and *Ireland*, King, defender of the faith, with force and arms, at *Fordingbridge* aforesaid, in the said county, three pigs, value each twenty five shillings, of the goods and chattels of the said *Richard Toomer* then and there being found, then and there did feloniously steal, take, and drive away, against the peace of our said lord the King, his crown and dignity, which said indictment the said justices last abovementioned by their own proper hands, afterwards, to wit, at the

the delivery of the goal of the said lord the King of his said county of *Southampton*, of the prisoners therein being, holden at the *Castle* of *Winton* aforesaid, in and for the said county, on the said third day of *March*, in the ninth year aforesaid, before the said *James Reynolds*, Esq; and Sir *Francis Page*, the justices of our said lord the King assigned to deliver the goal of the said county of the prisoners therein being, did deliver them into court to be determined upon record; and the said *Richard* thereupon further maliciously and unjustly prosecuted the said indictment against the said *William*, *Roger* and *Henry* until afterwards, to wit, at the then next delivery of the goal of the said lord the King, holden at the *Castle* of *Winton* aforesaid in and for the said county, on *Tuesday* the twenty seventh day of *July*, in the tenth year of the reign of our said lord the King, before Sir *Lawrence Carter*, knight, then one of the barons of the Exchequer of our said lord the King, and Sir *William Thompson*, knight, then another of the barons of the same court, then justices of our said lord the King assigned to deliver the goal of the said county of the prisoners therein being, they the said *William Plumby*, *Roger Plumby* and *Henry Rooke* were, and each of them was, by a jury of the county, and by judgment of the same court, duly acquitted and discharged of and from the premisses above charged upon them by the said indictment; by reason of which said false and malicious charge and prosecution, he the said *Henry* hath not only been greatly injured and scandalized in his good name, fame and reputation, but hath also been obliged to undergo great labour and trouble in clearing his innocence in this behalf, and hath also been obliged to lay out and expend, and hath laid out and expended a very large sum of money, to wit, the sum of two hundred pounds, in and about the defence of himself and his said servants against the said false and malicious charge and prosecution of the said *Richard*; and the said *Henry* further saith, that the said *Richard*, further devising and maliciously intending to hurt and prejudice the said *Henry* in his good name, fame and reputation,

reputation, and unjustly to oppress, harrafs and impoverish him, under colour of process of law, and put him in danger of undergoing a corporal punishment, and of forfeiting all his goods and chattels, afterwards, to wit, upon the third day of *March*, in the ninth year aforesaid, at *Fordingbridge* aforesaid, falsely and maliciously charged the said *Henry* with another crime of felony, viz. in feloniously stealing, taking, and driving away three other pigs, he the said *Richard* then and there falsely and maliciously alledging and pretending that the said three pigs last mentioned then and there were the proper goods and chattels of the said *Richard*; and the said *Richard* under pretence and colour of the false and malicious charge last abovementioned, afterwards, to wit, at the session of the said lord the King of *Oyer and Terminer*, held at the *Castle of Winton*, in and for the county aforesaid, on *Wednesday* the third day of *March*, in the ninth year of the reign of our said lord the King, before *James Reynolds*, Esq; then lord chief baron of his said Majesty's court of Exchequer, and *Sir Francis Page*, knight, then one of the justices appointed to hold pleas before the King himself, and others their associates, then justices of our said lord the King in that behalf assigned, falsely and maliciously, under the pretence and colour last aforesaid, caused and procured the said *Henry*, by the name of *Henry Rooke* of *Bremore*, in the said county, yeoman, together with one *William Plumby* of *Fordingbridge*, in the county of *Southampton* aforesaid, labourer, and *Roger Plumby* of the same place, labourer, to be falsely indicted, for that they the said *William*, *Roger* and *Henry*, upon the twenty fifth day of *September*, in the ninth year of our sovereign Lord *George* the Second, by the grace of God of *Great Britain, France and Ireland*, King, defender of the faith, with force and arms, at *Fordingbridge* aforesaid, in the said county, three pigs, value each twenty five shillings, of the goods and chattels of the said *Richard Toomer*, then and there being found, then and there did feloniously steal, take, and drive away, against the peace of our said lord the

S

King,

King, his crown and dignity, which said indictment last abovementioned the said justices last abovementioned, by their own proper hands, afterwards, to wit, at the delivery of the goal of the said lord the King of his said county of *Southampton* of the prisoners therein being, holden at the *Castle* of *Winton* aforesaid in and for the said county, on the said third day of *March*, in the ninth year aforesaid, before the said *James Reynolds* and *Sir Francis Page*, then justices of the said lord the King assigned to deliver the goal of the said county of the prisoners therein being, did deliver there into court to be determined upon record; and the said *Richard* thereupon further unjustly and maliciously prosecuted the said indictment last abovementioned against the said *Henry* until afterwards, to wit, at the delivery of the goal of our said lord the King, holden at the *Castle* of *Winton* aforesaid in and for the said county, afterwards, to wit, on *Tuesday* the twenty seventh day of *July*, in the tenth year of the reign of our said lord the King, before *Sir Lawrence Carter*, knight, then one of the barons of the Exchequer of our said lord the King, and *Sir William Thompson*, knight, then another of the barons of the same court, then justices of our said lord the King assigned to deliver the goal of the said county of the prisoners therein being, he the said *Henry* was in due manner, and according to the law and custom of *England*, acquitted of the premises above charged upon him by the indictment last abovementioned, by a jury of his country, and by the judgment of the same court; by reason of which unjust and malicious charge and prosecution last abovementioned, the said *Henry* is not only greatly scandalized and damaged in his good name, fame, and reputation, but hath been compelled to undergo great labours and troubles, and to expend divers other great sums of money, to wit, other two hundred pounds in and about his defence, and clearing his innocence in this behalf; and the said *Henry* further saith, that the said *Richard*, further devising and maliciously intending to hurt and prejudice the said *Henry* in his good name, fame and reputation, and unjustly to oppress, harass,

harrafs, and impoverish him, under colour of process of law, afterwards, to wit, at the said session of the said lord the King of *Oyer and Terminer*, held at the *Castle of Winton* in and for the said county, on *Wednesday* the said third day of *March*, in the ninth year afore-said, before the said *James Reynolds*, Esq; then lord chief baron of his said Majesty's court of Exchequer, and the said Sir *Francis Page*, knight, then one of the justices appointed to hold pleas before the King himself, *Christopher Hawkins**, Esq; and others their associates, then justices of the said lord the King in that behalf assigned, maliciously caused and procured the said *Henry*, by the name of *Henry Rooke*, of *Bremore*, in the said county of *Southampton*, yeoman, together with one *Edward Holmes* and *Roger Wilkins*, to be falsely indicted, for that they the said *Henry*, *Edward* and *Roger Wilkins*, the twenty second day of *August*, in the eighth year of the reign of our said lord the King, with force and arms, at *Gadshill*, in the parish of *Fordingbridge* afore-said, the manor house of one *Richard Toomer* then and there unlawfully did break and enter, to the great damage of the said *Richard Toomer*, and against the peace of our said lord the King, his crown and dignity; and the said *Richard* thereupon further unjustly and maliciously prosecuted the said indictment last abovementioned against the said *Henry* until afterwards, to wit, at the session of our said lord the King, of *Oyer and Terminer*, held at the *Castle of Winton* afore-said in and for the said county, on *Tuesday* the twenty seventh day of *July*, in the tenth year of the reign of our said lord the King, before Sir *Lawrence Carter*, knight, then one of the barons of the Exchequer of our said lord the King, and Sir *William Thompson*, knight, then another of the barons of the same court, *Christopher Hawkins*, Esq; and others their associates, then justices of our said lord the King in that behalf assigned, he the said *Henry* was in due

* There is a difference between the records of the felonies and trespasss, one mentions *Christopher Hawkins*, and the other not.

manner, and according to the law and custom of *England*, acquitted of the premisses above charged upon him by the indictment last above mentioned, by a jury of his country, and by the judgment of the same court; by reason of which false, unjust and malicious prosecution last abovementioned, the said *Henry* is not only greatly scandalized and damaged in his good name, fame, and reputation, but hath been compelled to undergo great labours and troubles, and to expend divers other great sums of money in and about his defence and clearing his innocence in this behalf, whereby he says he is prejudiced, and hath damage to the value of five hundred pounds, and thereupon he brings his suit, &c.

Tucker versus Davey.

*Indebitatus
assumpsit for
rent.*

——— To wit. *Thomas Tucker* complains of *William Davey*, in custody of the marshal, &c. FOR THAT WHEREAS the said *William* on the twenty fourth day of *June*, in the year of our Lord one thousand seven hundred and thirty six, at *Dorchester* in the county aforesaid, was indebted to the said *Thomas* in the sum of twenty pounds of lawful money of *Great Britain*, for the use and occupation of one messuage with the appurtenances, one grist mill, one malt mill, and three acres of land called *Mill Mead*, thereunto belonging, of the said *Thomas*, by him the said *William* before that time used, occupied, possessed and enjoyed, at his special instance and request, and being so indebted, the said *William* afterwards, to wit, the same day and year last mentioned, at *Dorchester* aforesaid, in the county aforesaid, in consideration thereof then and there undertook, and faithfully promised that he the said *William* would well and truly content and pay to the said *Thomas* the aforesaid sum of twenty pounds whenever he should be thereunto requested.

AND ALSO WHEREAS the said *Thomas* on the fourteenth day of *July*, in the year of our Lord one thousand seven hundred and thirty five, was possessed of

of one messuage with the appurtenances, one grist mill, one malt mill, and three acres of land thereunto belonging called *Mili Mead*, situate in the parish of *Weston Fitzpain*, in the county of *Dorset*; and being so possessed, he the said *William*, in consideration that the said *Thomas* at the special instance and request of him the said *William* would permit and suffer him the said *William* to use, occupy, possess and enjoy the said messuage, grist mill, malt mill, and three acres of land thereunto belonging, with the appurtenances, from the said fourteenth day of *July*, in the year of our Lord one thousand seven hundred and thirty five, until the twenty fourth day of *June*, in the year of our Lord one thousand seven hundred and thirty six, he the said *William* did then and there assume upon himself, and to him the said *Thomas* did faithfully promise, that he the said *William* should and would well and truly pay and satisfy unto the said *Thomas* so much money as the said *Thomas* ought reasonably to have for the use, occupation and enjoyment thereof for the time aforesaid, when he the said *William* should, after the said twenty fourth day of *June*, one thousand seven hundred and thirty six, be thereunto required; and the said *Thomas* in fact saith, that he did permit and suffer the said *William* to use, occupy, possess and enjoy the said messuage, grist mill, malt mill and three acres of land thereunto belonging, with the appurtenances, from the said fourteenth day of *July*, in the year of our Lord one thousand seven hundred and thirty five, until the said twenty fourth day of *June*, one thousand seven hundred and thirty six, and the said *William* used, occupied, possessed and enjoyed the same accordingly, and that he the said *Thomas* reasonably deserved, and ought to have of the said *William* for the same the sum of twenty pounds of good and lawful money of *Great Britain*, of which the said *William* had notice from the said *Thomas*.

Indebitatus assumpsit for goods sold and delivered, quantum meruit, and in simul comp.

AND the said *William* by *A. B.* his attorney, comes Plea, and defends the wrong and injury, when, &c. and

as

DECLARATIONS, PLEADINGS, &c.

as to the second, third, fourth and fifth promises and undertakings in the said declaration abovementioned, and also as to the first promise and undertaking in the said declaration above mentioned, as to all the money mentioned in the said first promise and undertaking, except the sum of five pounds, four shillings and eight pence halfpenny, parcel of the said twenty pounds in the said first promise and undertaking abovementioned by him the said *William* above supposed to be made, he the said *William* saith, that he did not take upon himself in manner and form as the said *Thomas* above thereof complains against him, and of this he puts himself upon his country, and the said *Thomas* likewise; and as to the said first promise and undertaking in the said declaration abovementioned, as to the said five pounds, four shillings and eight pence halfpenny, parcel of the said twenty pounds in the said first promise and undertaking abovementioned by the said *William* above supposed to be made, he the said *William* saith, that the said *Thomas* ought not to have or maintain his said action thereof against him to recover any damage against him by reason of the non payment of the said five pounds, four shillings and eight pence halfpenny, because he says that he the said *William* before the time of exhibiting of the said bill of the said *Thomas*, to wit, upon the said twenty fourth day of *June*, in the year of our Lord one thousand seven hundred and thirty six, at *Dorchester* aforesaid, was ready to pay, and then and there tendered and offered to him the said *Thomas* the said five pounds, four shillings and eight pence halfpenny, to pay him the same, which said five pounds, four shillings and eight pence halfpenny, the said *Thomas* then and there refused to accept of him the said *William*; and the said *William* saith, that he hath always from the time of making the said first promise and undertaking hitherto been ready, and yet is ready to pay to the said *Thomas* the said five pounds, four shillings and eight pence halfpenny, and now brings the same into court here ready to be paid to the said *Thomas*

Plea of tender of part.

mas if he will accept of the same, and this he is ready to verify, wherefore he prays judgment if the said *Thomas* ought to have or maintain his said action thereof against him to recover damages by reason of the non payment of the said five pounds, four shillings and eight pence halfpenny; and the said *Thomas* as to the plea of the said *William* as to the said first promise and undertaking in the said declaration abovementioned, as to the said five pounds, four shillings and eight pence halfpenny, parcel of the said twenty pounds in the said first promise and undertaking abovementioned, above pleaded by the said *William*, says, that he the said *Thomas*, by any thing in the said plea alledged, ought not to be debarred from having his said action against the said *William*, because he says that the said *William* did not tender and offer to him the said *Thomas* the said five pounds, four shillings and eight pence halfpenny, in manner and form as the said *William* has in pleading above alledged, and this he prays may be enquired of by the country; therefore, &c. &c.

Replication.

Munday *versus* Rolfe.

—To wit. *John Munday* complains of *William Robse* otherwise *Rolfe*, in the custody of the marshal, &c. for this, THAT WHEREAS the said *John Munday* is a good, true, honest and faithful subject of our sovereign lord the King, and as a good, true, honest and faithful subject of our said lord the King and his predecessors, hath always behaved himself from the time of his nativity hitherto.

For words.

AND WHEREAS the said *John* now is, and for divers years last past hath been an innholder, to wit, at *Ludgershall*, in the said county of *Wilts*, and during all the said time hath kept an inn at *Ludgershall* aforesaid, for the entertainment of travellers and other persons resorting thither, and sold beer and ale and other liquors there, and during all the time aforesaid hath been of a good name, credit and reputation in his

DECLARATIONS, PLEADINGS, &c.

his said trade and business, and hath always hitherto faithfully and honestly, from time to time, paid and discharged all his debts to all and every his creditors with whom he had any dealing, by reason of which fair and honest dealing the said *John* not only gained great credit and esteem in his said trade amongst his neighbours and others his customers who were used to frequent his house, but also thereby gained a comfortable subsistence for himself and his family; yet the said *William Rolfe*, otherwise *Rolfe*, not being ignorant of the premises, but maliciously devising, and intending to injure the said *John* in his good name, fame, credit and reputation, and to deprive him of the means of gaining a livelihood for himself and family, upon the first day of *January*, in the year of our Lord one thousand seven hundred and thirty four, at *Ludgershall* aforesaid, in the county aforesaid, in the presence and hearing of divers of his said Majesty's faithful subjects, falsely and maliciously, openly and publicly, spoke, uttered, and with a loud voice pronounced and published these false, feigned and scandalous words following of him the said *John*, and of his said trade and business, that is to say, *John Munday* (meaning the said *John Munday* the plaintiff) is broke, and I (meaning the said *William*) was forced to buy a shoulder of mutton myself, (again meaning the said *William*) for the butcher at *Ludgershall* would not trust him (again meaning the said *John*) with a shoulder of mutton; and the said *William* of his further malice afterwards, to wit, upon the same day and year abovementioned, at *Ludgershall* aforesaid, in the county aforesaid, in the presence and hearing of divers others of his said Majesty's faithful subjects, falsely and maliciously, openly and publicly, spoke, uttered, and with a loud voice pronounced and published these other false, feigned, and scandalous words following of him the said *John*, and of his trade and business, that is to say, *John Munday* (meaning the said *John* the now plaintiff) is broke, and nobody will trust him (again meaning the said *John*); and the said *William* of his further malice afterwards, to wit, &c. (as before) published

published these other false, feigned, and scandalous words following of him the laid *John Munday*, and of his said trade and business, that is to say, *John Munday* (meaning the said *John Munday* the now plaintiff) is broke; and the said *William* of his further malice afterwards, to wit, &c. that is to say, he (meaning the said *John* the now plaintiff) is broke; and the said *William* of his further malice afterwards, to wit, &c. that is to say, *John Munday* (meaning the said *John* the now plaintiff) had no beer for me (meaning him the said *William*) or any of his guests (meaning the guests of the said *John*) in his house (meaning the said inn of the said *John*); and the said *William* of his further malice afterwards, to wit, &c. that is to say, *John Munday* (meaning the said *John Munday* the now plaintiff) has no beer in his house (meaning the inn of the said *John Munday*) for his guests (meaning the guests of the said *John Munday*); and the said *William* of his further malice aforesaid, afterwards, to wit, &c. that is to say, *John Munday* (meaning &c.) is broke, and I (meaning, &c.) was forced to buy a shoulder of mutton myself, (again meaning, &c.) for the butchers of *Ludgershall* would not trust him (again meaning, &c.) with a shoulder of mutton; and after I (again meaning the said *William*) had bought the shoulder of mutton, he (again meaning the said *John*) had not wood to dress it, nor had he (again meaning the said *John*) any beer for me (again meaning the said *William*) nor any of his guests that he (again meaning the said *John Munday*) had in his house (meaning the said inn of the said *John Munday*); by reason of the speaking and publishing of which said several false, feigned and scandalous words, the said *John* is not only greatly injured in his good name, fame, credit and reputation, trade and business, but divers of his said Majesty's faithful subjects that were used and accustomed to resort to, and frequent the said *John Munday's* house, and trade and deal with him there in his said trade of an innholder, and to expend and lay out great sums of money with him, have wholly neglected and refused so to do, and the said

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said *John* hath been obliged to undergo great trouble and labour, and to expend and lay out divers large sums of money to clear his credit and reputation in this behalf, to the damage of the said *John* two hundred pounds, and thereupon he brings his suit, &c.

R. Draper.

TRINITY TERM, 10 GEO. II.

Newnham versus Newnham.

Upon an agreement.

—To wit. *Thomas Newnham* complains of *John Newnham*, in custody of the marshal, &c. for this, THAT WHEREAS upon the twenty fifth day of *March*, in the year of our Lord one thousand seven hundred and thirty, at *Portsmouth*, in the said county, in consideration that the said *Thomas Newnham*, at the special instance and request of the said *John Newnham*, would surrender his place of a custom house officer, which he then held and enjoyed, and would procure the said place for the said *John Newnham*, he the said *John Newnham* took upon himself, and then and there faithfully promised the said *Thomas Newnham* to pay him twelve pounds yearly and every year that he the said *John Newnham* should hold and enjoy the said office during the life of *Frances*, then the wife of the said *Thomas Newnham*; and the said *Thomas Newnham* in fact saith, that he relying on the said promise and undertaking of the said *John Newnham*, afterwards, to wit, upon the same day and year, at *Portsmouth* aforesaid, surrendered his said place, and then and there procured the same for the said *John Newnham*, and the said *John Newnham* from thence continually hitherto hath held and enjoyed the same accordingly, and the said *Frances* the wife of the said *Thomas Newnham* is still living, to wit, at *Portsmouth* aforesaid; yet the said *John Newnham* not regarding his said promise and undertaking made in form aforesaid, but devising and fraudulently intending to defraud and deceive the said

Thomas

Thomas in this behalf, hath not yet paid him the said twelve pounds, yearly and every year that he the said *John Newnham* hath held and enjoyed the said office, or any part thereof, (although the said *John Newnham*, afterwards, to wit, upon the eighth day of *May*, in the year of our Lord one thousand seven hundred and thirty six, and often afterwards at *Portsmouth* aforesaid, by him the said *Thomas Newnham* was requested so to do) but hath hitherto refused, and still doth refuse to pay the same to him, whereby he says he is prejudiced, and hath damage to the value of one hundred pounds, and thereof he brings his suit, &c.

HILARY TERM, 10 GEO. II.

Atwick versus Wickham.

—To wit. *John Atwick*, Esq; complains of *John Wickham*, in the custody of the marshal, &c. for use and occupation. this, THAT WHEREAS the said *John Wickham* upon the first day of *October*, in the year of our Lord one thousand seven hundred and thirty six, at *Titchfield*, in the county aforesaid, was indebted to the said *John Atwick* in forty pounds of lawful money of *Great Britain*, for the use and occupation of one messuage, one barn, one stable, one cart house, one garden, and divers, to wit, forty acres of land, with the appurtenances, situate, lying and being in the parish of *Titchfield*, in the county aforesaid, by the said *John Wickham*, at the special instance and request of the said *John Wickham*, and by the permission of the said *John Atwick* before that time, by, from and under him the said *John Atwick*, held, occupied and enjoyed, and being so indebted, he the said *John Wickham* afterwards, to wit, upon the same day and year abovementioned, at *Titchfield* aforesaid, in consideration thereof took upon himself, and to the said *John Atwick* then and there faithfully promised, that he the said *John W.* would well and truly pay and satisfy to the said

John

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John Atwick the said forty pounds when afterwards he should be thereunto required.

AND WHEREAS ALSO afterwards, to wit, upon the same day and year abovementioned, at *Titchfield* aforesaid, in consideration that the said *John Atwick*, at the like special instance and request of the said *John Mickham*, had permitted him the said *J. Mickham* to have the use and occupation of one other messuage, one other barn, one other stable, one other cart house, one other garden, and divers, to wit, forty other acres of land of the said *John Atwick*, with the appurtenances, situate, lying and being in the parish of *Titchfield* aforesaid, for a long time then lately elapsed, and the said *John Mickham* in pursuance of the request and permission last abovementioned, had held, occupied and enjoyed the same accordingly, he the said *John Mickham* took upon himself, and to the said *John Atwick* then and there faithfully promised to pay him so much money as the said *John Atwick* reasonably deserved to have for the same when afterwards he should be thereunto required; and the said *John Atwick* in fact saith, that he the said *John Atwick* reasonably deserved to have of him the said *John Mickham* for the use and occupation of the said messuage, barn, stable, cart house, garden and land, with the appurtenances last abovementioned, another sum of forty pounds, to wit, at *Titchfield* aforesaid, whereof the said *John Mickham* afterwards, to wit, upon the same day and year abovementioned, at *Titchfield* aforesaid, in the county aforesaid, had notice; yet the said *John Mickham* not regarding his said several promises and undertakings made in form aforesaid, but contriving and fraudulently intending to defraud and deceive the said *John Atwick* in this behalf, hath not yet paid the said several sums of money or any part thereof to the said *John Atwick* (although the said *John Mickham* afterwards to wit, upon the said first day of *October*, in the year aforesaid, and often afterwards, at *Titchfield* aforesaid, by him the said *John Atwick* was requested so to do) but hath hitherto

thereto altogether refused, and still doth refuse to pay the same to him, whereby he says he is prejudiced, and hath damage to the value of forty pounds, and therefore he brings his suit, &c.

Ridge versus Day.

—To wit. *Thomas Ridge*, Esq; complains of *Thomas Day* in the custody of the marshal, &c. for this, THAT WHEREAS the said *Thomas Ridge*, upon the eighteenth day of *March*, in the year of our Lord one thousand seven hundred and thirty three, at *Basingstoke*, in the county of *Southampton*, by his certain writing obligatory, sealed with the seal of the said *Thomas Ridge*, acknowledged himself to be held and firmly bound unto the said *Thomas Day* in seven hundred and twenty four pounds of lawful money of *Great Britain*, with a condition there under written for the payment of three hundred and sixty two pounds, on the eighteenth day of *November*, which should be in the year of our Lord one thousand seven hundred and thirty four, with lawful interest for the same.

For obliging
plaintiff to
put in excess-
five bail.

AND WHEREAS ALSO the said *Thomas Ridge* afterwards, to wit, upon the twenty ninth day of *December*, in the year of our Lord one thousand seven hundred and thirty four aforesaid, at *Basingstoke* aforesaid, paid unto the said *Thomas* the sum of one hundred pounds, in part of the principal money and interest due and payable to the said *Thomas Day* by the condition of the said writing obligatory, and afterwards, to wit, upon the twenty eighth day of *February*, in the said year of our Lord one thousand seven hundred and thirty four, at *Basingstoke* aforesaid, he the said *Thomas Ridge* also paid unto the said *Thomas Day* the further sum of twenty pounds, in part also of the principal money and interest due and payable by the said *Thomas Ridge* to the said *Thomas Day* by the said condition of the said writing obligatory.

AND WHEREAS ALSO the said *Thomas Ridge* afterwards, to wit, upon the twenty ninth day of *May*,
in

in the year of our Lord one thousand seven hundred and thirty six, at *Basingstoke* aforesaid, was indebted unto the said *Thomas Day*, on a simple contract, in a small sum of money, not amounting to near the sum of fifty pounds, to wit, in the sum of twenty six pounds eighteen shillings and three pence of like lawful money, and the said *Thomas Ridge* being so indebted, he the said *Thomas Day*, on the same day, and year last abovementioned, at *Basingstoke* aforesaid, according to the usage and custom of merchants, then and there made his bill of exchange with his own hand thereto subscribed, and directed the said bill of exchange to the said *Thomas Ridge*, by the name of *Thomas Ridge*, Esq; at *Portsmouth*, and by the said bill of exchange the said *Thomas Day* requested the said *Thomas Ridge* seventeen days after date to pay to one *William Heaven*, by the name of *Mr. William Heaven*, or order, the sum of one hundred pounds as by advice from the said *Thomas Day*; and the said *Thomas Ridge* afterwards, to wit, upon the same twenty ninth day of *May*, in the said year of our Lord one thousand seven hundred and thirty six, at *Basingstoke* aforesaid, accepted the said bill of exchange to pay the same on the twentieth day of *July* then next ensuing; and afterwards, to wit, upon the twenty third day of the same *July*, in the said year of our Lord one thousand seven hundred and thirty six, at *Basingstoke* aforesaid, he the said *Thomas Ridge* paid the contents of the said bill of exchange to the order of the said *William Heaven*, which said bill of exchange was so drawn by the said *Thomas Day*, and accepted by the said *Thomas Ridge* towards payment of further part of the moneys remaining due from the said *Thomas Ridge* to the said *Thomas Day* as aforesaid; yet the said *Thomas Day*, not being ignorant of the premises, but maliciously devising and intending unjustly to oppress the said *Thomas Ridge*, and to cause and procure him to be held to excessive bail in several very large sums of money, and to give security to the sheriff in very large sums of money when there was only a small sum of money remaining due to the said *Thomas Day* from the said *Thomas Ridge*, to wit, the sum of one hundred

dred and thirty eight pounds two shillings and seven pence in the whole, besides the said one hundred pounds upon the said bill of exchange so drawn and accepted as aforesaid, he the said *Thomas Day*, after payment of the said several sums of one hundred pounds and eighty pounds, and acceptance of the said bill of exchange as aforesaid, to wit, upon the seventh day of *June*, in *Easter* term, in the ninth year of the reign of our present lord the King, wrongfully and maliciously caused to be sued out of the court of our said lord the King of the bench, to wit, at *Westminster*, in the county of *Middlesex*, a certain writ of our said lord the King against the said *Thomas Ridge*, directed to the then sheriff of *Hampshire*, by which said writ our said lord the King commanded the said sheriff of *Hampshire* that he should take the said *Thomas Ridge* if he should be found in his bailiwick, and him safely keep, so that he might have his body before the justices of our said lord the King at *Westminster* aforesaid, in the octave of the *Holy Trinity* then next ensuing, to answer the said *Thomas Day* of a plea, wherefore with force and arms he broke the close of the said *Thomas Day*, at *London*, and did him other wrongs, to the great damage of the said *Thomas Day*, and against the peace of our said lord the King, and also to answer the said *Thomas Day* according to the custom of the court of our said lord the King of common bench, in a certain plea of debt upon demand for seven hundred and twenty four pounds, and that the said sheriff should then have there that writ; and the said *Thomas Day* afterwards, to wit, upon the seventh day of *June*, in the tenth year of the reign of the said lord the King, at *Basingstoke* aforesaid, wrongfully and maliciously caused the said writ to be indorsed by oath for seven hundred and twenty four pounds, according to the form of the statute in such case lately made and provided; and the said *Thomas Day* of his further malice aforesaid, afterwards, to wit, upon the seventh day of *June*, in the same term of *Easter*, in the said ninth year of the reign of our said lord the King, wrongfully and maliciously caused to be sued out of the court of our said lord the King of the bench,

bench, to wit, at *Westminster* aforesaid, a certain other writ of our said lord the King against the said *Thomas Ridge*, directed to the then sheriff of *Hampshire*, by which said writ last abovementioned our said lord the King commanded the said sheriff of *Hampshire* that he should take the said *Thomas Ridge* if he should be found in his bailiwick, and him safely keep, so that he might have his body before the justices of our said lord the King, at *Westminster* aforesaid, in the octave of the *Holy Trinity* aforesaid, to answer to the said *Thomas Day* in a plea, wherefore with force and arms he broke the close of the said *Thomas Day*, at *London*, and did him other wrongs, to the great damage of the said *Thomas Day*, and against the peace of our said lord the King, and also to answer unto the said *Thomas Day*, according to the custom of the court of our said lord the King of common bench, in a certain plea of trespass upon promises and undertakings, to the damage of the said *Thomas Day* seventy pounds, and that the said sheriff should then have there that writ; and the said *Thomas Day* afterwards, to wit, upon the seventeenth day of *June*, in the tenth year aforesaid, at *Basingstoke* aforesaid, wrongfully and maliciously caused the said writ last mentioned to be indorsed by oath for fifty pounds, according to the form of the statute in such cases lately made and provided; and the said *Thomas Day* afterwards, and before the return of the said several writs, upon the same day and year last abovementioned, at *Basingstoke* aforesaid, wrongfully and maliciously caused the said several writs to be delivered to *John Butler*, Esq; then, and from thence until and at the return of the same writs, being sheriff of *Hampshire* aforesaid, to be by him executed in due form of law; by reason and means whereof the said *Thomas Ridge* was obliged to give, and did give excessive bail to the said sheriff for his appearance in the said court of the bench at *Westminster* aforesaid, to answer to the said *Thomas Day* upon the said several writs at the return thereof, to wit, the said *Thomas Ridge*, together with *John Hasler*, gent. and *William Daman*, merchant, as his sureties, afterwards and before the return of the said several

veral writs, to wit, upon the twenty sixth day of *June*, in the year last aforesaid, at *Basingstoke* aforesaid, became bound by their bonds to the said sheriff by the name of his said office, in the sum of one thousand four hundred and forty eight pounds, to be paid to the said sheriff upon demand, with condition thereto underwritten that the same should be void upon the said *Thomas Ridge's* appearing before the said justices of the bench at *Westminster* aforesaid, at the return of the said first writ, to answer to the said *Thomas Day* in the pleas in the same writ mentioned, otherwise that the said bond should be in its full force; and the said *Thomas Ridge* also, together with the said *John Hasler* and *William Daman*, as his sureties, upon the same twenty sixth day of *June*, in the same year, at *Basingstoke* aforesaid, became bound by their bond to the said sheriff by the name of his said office, in the sum of one hundred pounds, to be paid by the said sheriff upon demand, with condition thereto underwritten that the same should be void upon the said *Thomas Ridge's* appearing before the said justices of the bench, at *Westminster* aforesaid, at the return of the said other writ abovementioned, to answer to the said *Thomas Day* in the pleas in the said other writ mentioned, otherwise that the said last bond should be in full force; when in truth and in fact the said *Thomas Ridge*, at the times of suing out the said writs and giving the said bonds to the said sheriff as aforesaid, was not indebted to the said *Thomas Day* in any other or greater sum or sums of money, nor in any other manner than is herein before mentioned; and by reason of the premisses the said *Thomas Ridge* hath been put to great labour and trouble in procuring such security to be given to the said sheriff, and been obliged to lay out great sums of money on account thereof, and hath also been obliged to expend other large sums of money in procuring bail to be accepted by the said court of the bench for a lesser sum, to wit, for two hundred pounds, in the said action of debt; and the said *Thomas Ridge* further saith, that he the said *Thomas Ridge* afterwards, to wit, upon the eighth day of *December*, in the year of our

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Lord

DECLARATIONS, PLEADINGS, &c.

Lord one thousand seven hundred and thirty six, at *Basingstoke* aforesaid, paid to the said *Thomas Day* the sum of one hundred and sixty four pounds one shilling and nine pence, in full for his debts and costs upon the said several writs, and the several suits upon the said writs are now determined and ended; by reason of which premisses the said *Thomas Ridge* saith that he is prejudiced and damaged to the value of six hundred pounds, and thereupon he brings his suit, &c.

EASTER TERM, 10 GEO. II.

Rutland *versus* Archer, Esq;

*Indebitatus
assumpsit* for
rent for
rooms in a
house, and
use of fur-
niture.

—To wit. *Alicia Rutland* complains of *Thomas Archer*, Esq; in custody of the marshal, &c. for that, to wit, WHEREAS the said *Thomas* the twenty fifth day of *March*, in the year of our Lord one thousand seven hundred and thirty five, at the parish of *St. James, Westminster*, in the county of *Middlesex*, was indebted to the said *Alicia* in six hundred pounds of lawful money of *Great Britain*, for the use and occupation of several rooms in, and part of the dwelling house of the said *Alicia*, situate in the said parish of *St. James, Westminster*, in the county aforesaid, and of divers goods and furniture in the said several rooms, by her the said *Alicia* to the said *Thomas*, before that time, at the request of the said *Thomas*, accordingly used, occupied and enjoyed, and being so indebted, in consideration thereof the said *Thomas* afterwards, to wit, the said twenty fifth day of *March*, in the said year of our Lord one thousand seven hundred and thirty five, at the said parish of *St. James, Westminster*, in the county of *Middlesex* aforesaid, assumed upon himself, and to the said *Alicia* then and there faithfully promised, that he the said *Thomas* to the said *Alicia* the said sum of six hundred pounds, when he the said *Thomas* should be thereunto required, would well and faithfully content and pay.

AND WHEREAS ALSO the said *Alicia* afterwards, to wit, on the day and year last aforesaid, at the said parish

parish of *St. James, Westminster*, in the county aforesaid, in consideration that the said *Thomas* had before that time for a long time held, occupied and enjoyed several other rooms, part and parcel of one other messuage or tenement of the said *Alicia*, situate and being in the parish of *St. James, Westminster*, in the county aforesaid, and made use of several other goods and furniture of the said *Alicia*, in the said several rooms, by the permission of the said *Alicia* to him the said *Thomas*, at his special instance and request given and granted by the said *Alicia*, assumed upon himself, and to the said *Alicia* then and there faithfully promised, that he the said *Thomas*, so much money as the said *Alicia* deserved to have for the same to the said *Alicia*, when he should be afterwards thereunto required, would well and faithfully content and pay,

Concludes with an averment and with YET, &c.

HILARY TERM, 10 GEO. II.

Beere *versus* Hall.

—To wit. *Roger Beere* complains of *John Hall*, ^{*Assumption*} in the custody of the marshal, &c. For this, THAT ^{a contract} WHEREAS upon the second day of *August*, in the year ^{for coals.} of our Lord one thousand seven hundred and thirty six, at *Lymington*, in the county of *Southampton*, in consideration that the said *Roger*, at the special instance and request of the said *John Hall*, had bought of the said *John Hall* a cargo of coals, of and in a certain ship called the *Catherine* and *Elizabeth*, of *Scarborough*, whereof the said *John Hall* then was master, at the rate and price of nineteen shillings and six pence per chaldron for every chaldron thereof; and the said *Roger*, at the like instance and request of the said *John Hall*, had then and there taken upon himself and faithfully promised the said *John Hall* to pay him the said rate and price for the same, he the said *John Hall* took upon himself, and to the said *Roger* then and there faithfully promised to deliver the said cargo of coals to the

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said *Roger*; and the said *Roger* in fact says, that the said cargo of coals so by him bought of the said *John Hall* as aforesaid, then and there contained three hundred chaldron of coals, of which the said *John Hall* afterwards, to wit, upon the same day and year, at *Lymington* aforesaid had notice; and although the said *Roger* hath always been ready and willing, and often offered the said *John Hall* to pay him the rate and price aforesaid on delivery of the said coals, yet the said *John Hall* not regarding his said promise and undertaking made in form aforesaid, but devising and fraudulently intending to deceive and defraud the said *Roger* in this behalf, hath not delivered, nor caused to be delivered to the said *Roger* the said cargo of coals, nor any part thereof (although the said *John Hall* afterwards, to wit, upon the fifth day of *August*, in the said year of our Lord one thousand seven hundred and thirty six, and often afterwards, at *Lymington* aforesaid, by him the said *Roger* was requested so to do) but hath hitherto refused, and still doth refuse to deliver the same to him.

AND WHEREAS ALSO afterwards, to wit, upon the said second day of *August*, in the year aforesaid, at *Lymington* aforesaid, in consideration that the said *Roger*, at the like instance and request of the said *John Hall*, had then and there taken upon himself and faithfully promised the said *John Hall* to pay him the rate and price of nineteen shillings and six pence per chaldron for every chaldron of another cargo of coals of the said *John Hall*, he the said *John Hall* took upon himself, and then and there faithfully promised the said *Roger* to deliver to him the said cargo last abovementioned; and the said *Roger* in fact saith, that the said cargo last mentioned then and there contained another three hundred chaldron of coals; and although the said *Roger* hath always been ready and willing, and often offered the said *John Hall* to pay him the rate and price last aforesaid, on delivery of the said cargo of coals last abovementioned, yet the said *John Hall* not regarding his said last mentioned promise and undertaking, but devising and fraudulently intending to deceive

deceive and defraud the said *Roger* in this behalf, hath not yet delivered to the said *Roger* the said last cargo of coals, nor any part thereof (although the said *John Hall* afterwards, to wit, upon the fifth day of *August*, in the year aforesaid, and often afterwards, at *Lymington* aforesaid, was requested by the said *Roger* so to do) but hath hitherto refused, and still doth refuse to deliver the same to him.

AND WHEREAS ALSO afterwards, to wit, upon the said second day of *August*, in the year aforesaid, at *Lymington* aforesaid, in consideration that the said *Roger*, at the like instance and request of the said *John Hall*, would pay to the said *John Hall* the rate and price of nineteen shillings and six pence per chaldron for every chaldron of another cargo of coals of the said *John Hall*, upon the delivery thereof to him the said *Roger*, he the said *John Hall* took upon himself, and then and there faithfully promised the said *Roger* to deliver to him the said cargo last abovementioned; and the said *Roger* in fact saith that he the said *Roger* afterwards, to wit, upon the fifth day of *August*, in the year aforesaid, at *Lymington* aforesaid, tendered and offered to the said *John Hall* to pay him the rate and price last abovementioned, and then and there requested him the said *John Hall* to deliver to him the said *Roger* the cargo last abovementioned, which said cargo then and there amounted to another three hundred chaldron of coals; yet the said *John Hall* not regarding his said last promise and undertaking, but devising and fraudulently intending to deceive and defraud the said *Roger* in this behalf (although often requested) hath not yet delivered to the said *Roger* the said cargo last abovementioned, nor any part thereof, but hath hitherto refused, and still doth refuse to deliver the same to him.

AND WHEREAS ALSO afterwards, to wit, upon the said second day of *August*, in the said year of our Lord one thousand seven hundred and thirty six, at *Lymington* aforesaid, in the county of *Southampton* aforesaid, in consideration that the said *Roger*, at the like special instance and request of the said *John Hall*, had bought of the said *John Hall* another cargo of coals, at the rate
and

and price of nineteen shillings and sixpence per chaldron for every chaldron thereof, and had then and there taken upon himself, and faithfully promised the said *John Hall* to pay him the said rate and price for the same, he the said *John Hall* took upon himself and to the said *Roger* then and there faithfully promised to deliver the said cargo of coals abovementioned to the said *Roger* when afterwards he should be thereunto requested; and the said *Roger* in fact says, that the said cargo of coals last abovementioned, so by him bought of the said *John Hall* as aforesaid, contained other three hundred chaldron of coals, of which the said *John Hall* afterwards, to wit, upon the same day and year, at *Lymington* aforesaid, had notice; and although the said *Roger* hath always been ready and willing, and often offered the said *John Hall* to pay him the rate and price last abovementioned on delivery of the said cargo last mentioned, yet the said *John Hall* not regarding the said last promise and undertaking made in form aforesaid, but devising and fraudulently intending to deceive and defraud the said *Roger* in this behalf, hath not yet delivered, nor caused to be delivered to the said *Roger* the said last mentioned cargo of coals (although the said *John Hall* afterwards, to wit, upon the fifth day of *August*, in the year of our Lord one thousand seven hundred and thirty six, and often afterwards, at *Lymington* aforesaid, by him the said *Roger* was requested so to do) but hath hitherto refused, and still doth refuse to deliver the same to him, whereby he says he is prejudiced, and hath damage to the value of one hundred pounds, and thereupon he brings his suit, &c.

Daman versus Kennet,

An action
brought by
the high
sheriff
against his
under she-
riff, on his
bond to in
demnify the
high sheriff.

—To wit. *Edward Daman*, gent. complains of *George Kennet*, in the custody of the marshal, &c. for this, THAT WHEREAS upon the twentieth day of *October*, in the year of our Lord one thousand seven hundred and thirty five, and from thence continually, until upon and after the return of the writ hereinafter mentioned, at *Basingstoke*, in the county
afore-

aforesaid, the said *George Kennet* was of the town and county of *Poole*, under sheriff to *Walter Spurrier*, Esq; during all that time sheriff of the said town and county of *Poole*.

AND WHEREAS the said *George*, being so under sheriff as aforesaid, afterwards, to wit, upon the same day and year, at *Basingstoke* aforesaid, duly appointed the said *Edward Daman* to be deputy to him the said *George Kennet*, to act for him in the said office of under sheriff, by virtue whereof the said *Edward Daman*, during all the time aforesaid, was and continued his deputy as aforesaid.

AND WHEREAS the said *Edward Daman* afterwards, to wit, upon the same day and year, at *Basingstoke* aforesaid, became bound to the said *Walter Spurrier*, then being sheriff as aforesaid, in the penal sum of with condition for his the said *George Kennet's* due execution of his said office of under sheriff.

AND WHEREAS, upon the same day and year, at *Basingstoke* aforesaid, *Robert Wadham*, Esq; was indebted unto *Elizabeth Ridge*, widow, *Thomas Dacres*, Esq; and *John White*, gent. in the sum of three hundred and thirteen pounds, four shillings and ten pence of lawful money of *Great Britain*, and being so indebted, the said *Elizabeth*, *Thomas* and *John*, in order to recover the said debt from the said *Robert Wadham*, afterwards, to wit, in the term of *St. Michael*, in the year aforesaid, sued out of the court of the lord the now King before the King himself (the said court then being at *Westminster*, in the county of *Middlesex*) a certain writ of the said lord the King, directed to the then sheriff of the said town and county of *Poole*, by which said writ the said sheriff was commanded that he should take the said *Robert Wadham* if he should be found in his bailiwick, and keep him safe, so that the said sheriff might have his body before the said lord the King, at *Westminster* aforesaid, on next after then next following, to answer to the said *Elizabeth Ridge*, *Thomas Dacres* and *John White*, in a plea of trespass, and also to a bill of the said *Elizabeth*, *Thomas* and *John*, to be exhibited against the said *Robert* according

cording to the custom of the said court, before the King himself, for which said writ was then and there duly indorsed upon oath for the sum of according to the form of the statute in such case lately made and provided ; and the said writ so indorsed, afterwards, and before the return thereof, to wit, upon the twenty first day of *January*, in the year aforesaid at *Basingstoke*, in the county of *Southampton*, was delivered to the said *Edward Daman* by and on the behalf of the said *Elizabeth, Thomas* and *John*, for him the said *Edward Daman* to procure the same to be executed in due form of law ; and thereupon, afterwards and before the return of the said writ, to wit, upon the said twenty first day of *January*, in the year aforesaid, at *Basingstoke* aforesaid, in consideration that the said *Edward Daman*, at the special instance and request of the said *George Kennet*, would not insist on the said *Robert Wadham's* giving, nor oblige him to give a bail bond to the then sheriff of the said town and county of *Poole* for his the said *Robert's* appearance before the lord the King at *Westminster* aforesaid, at the return of the said writ, to answer to the said *Elizabeth, Thomas* and *John* according to the exigency of the said writ, (the said *Robert Wadham* then being mayor of the said town and county of *Poole*) he the said *George Kennet* took upon himself, and then and there faithfully promised the said *Edward Daman*, that he the said *George Kennet* would produce and deliver unto the said *Edward Daman*, or such other person or persons as he the said *Edward Daman* should order and appoint, and at such time and place as he the said *Edward Daman* should direct, the body of the said *Robert Wadham*, Esq ; the mayor of the said town and county of *Poole*, to answer to the said action at law brought against the said *Robert Wadham* by the said *Elizabeth, Thomas* and *John*, as aforesaid, and in default thereof that he the said *George Kennet* would pay unto the said *Edward Daman* or his order, on demand, the sum of three hundred and thirteen pounds, four shillings and ten pence, together with all costs of suit ; and the said *Edward Daman* in fact saith, that he relying on the said promise and undertaking

taking of the said *George Kennet*, did not insist on the said *Robert Wadham's* giving, nor oblige him to give a bail bond to the then sheriff of the said town and county of *Poole* for his the said *Robert's* appearance before the said lord the King at *Westminster* aforesaid, at the return of the said writ, to answer to the said *Elizabeth, Thomas and John*, according to the exigence of the said writ, but the said *Edward Daman* then and there, and always afterwards, forbore to insist on the said *Robert Wadham's* giving, and also forbore to oblige the said *Robert* to give such bail bond as aforesaid; and the said *Edward Daman* further in fact saith, that he the said *Edward Daman* afterwards, to wit, upon the twenty eighth day of *June*, in the year of our Lord one thousand seven hundred and thirty six, at *Basingstoke* aforesaid, requested the said *George Kennet*, and then and there requested and appointed the said *George Kennet* to deliver the body of the said *Robert Wadham* into the said court of the said lord the King before the King himself, upon the thirteenth day of that instant *June*, (the said court then being held at *Westminster* aforesaid) to answer the said *Elizabeth, Thomas and John*, according to the exigence of the said writ, which the said *George Kennet* then and there and ever since hath neglected and refused to do, and the body of the said *George Kennet* was not then, nor ever before, nor afterwards delivered into the said court on the account aforesaid, by reason whereof afterwards, to wit, upon the

day of
in the year last aforesaid, a writ of attachment issued out of the said court of the said lord the King before the King himself (the said court being then held at *Westminster* aforesaid) against the said *Walter Spurrier*, the sheriff aforesaid, for a contempt by him committed, in that the body of the said *Robert Wadham* was not brought into the said court pursuant to a rule of the said court in that behalf made, and by reason of the premisses the said bond so as aforesaid entered into by the said *Edward Daman* to the said *Walter Spurrier* is become forfeited, and the said *Edward Daman* is become liable to make a satisfaction to the said *Elizabeth, Thomas and John*, for their said debt of three hundred and
thirteen

thirteen pounds, four shillings, and ten pence, and also for the costs of their said suit, amounting to twenty pounds, the said *Robert* being unable to pay the same or any part thereof, and the same being still unpaid, and yet the said *George Kennet* hath not paid to the said *Edward Daman*, nor to any order of the said *Edward Daman*, the said debt of three hundred and thirteen pounds, four shillings and ten pence, nor the said costs of suit, nor any part thereof (although the said *George Kennet* afterwards, to wit, upon the first day of *March*, in the year of our Lord one thousand seven hundred and thirty six, and often afterwards, at *Basingstoke* aforesaid, hath been requested by the said *Edward Daman* to pay the same) but hath hitherto refused and still doth refuse to pay the same.

AND WHEREAS, &c. (*Count for moneys paid, laid out and expended, and for moneys had and received*)—YET the said *George Kennet* not regarding his said two last promises and undertaking, but devising and fraudulently intending, &c.

N. B. I think plaintiff should be very cautious of going to trial in this cause, for it will be difficult to make a good consideration, or to prove one; and there does not appear any damage actually yet sustained.

R. Draper.

Plea.

AND the said *George* in his own proper person comes and defends the wrong and injury, when, &c. and prays Oyer of the said writing, and it is read to him, &c. he prays also Oyer of the condition of the said writing, and it is read to him in these words, that is to say which being read and heard, the said *George* says that the said *Robert* ought not to have or maintain his said action against him, because he says that the said *Martin* from the time of the making of the said writing until the time of exhibiting of the said bill of the said *Martin* hath not been damnified by reason of or for touching or concerning the return or returns, execution or executions of any process, writ or writs, warrant or warrants of any nature whatsoever, directed to the sheriff of the said town and county of *Poole* in the said condition mentioned, and brought and delivered, or offered

offered to be delivered to the said Edward Daman during the time that the said Robert Wadham was sheriff of the said town and county, nor by reason of any issue or issues, fine or fines, amerciamment or amerciamentes, which happened to be imposed or taxed upon the said Robert Wadham for or concerning the not executing, wrongfully executing, or detaining in his the said George's hands, any writ or writs, process, or warrant or warrants nor by reason of, for or concerning any escape or escapes of any person or persons arrested or apprehended by virtue of any such writ, process or warrant, during the time that the said Robert Wadham continued sheriff of the said town and county, and this he is ready to verify, whereof he prays judgment if the said Edward ought to have or maintain his said action against him, &c. R. D.

Rogers *versus* Rush.

To the Justices of our Lord the King of the Bench.

—To wit. *Thomas Rogers*, by *Ralph Phelps* his attorney, complains of *Samuel Rush*, gent. one of the attorneys of the court of our lord the King of the common bench, present here in court in his proper person, *Assumpsit against an attorney of the Common Pleas.* FOR THAT WHEREAS the said *Samuel* after the first day of *May*, in the year of our Lord one thousand seven hundred and five, to wit, on the thirtieth day of *September*, in the year of our Lord one thousand seven hundred and thirty six, at the town of *Bedford*, in the county aforesaid, made his certain note in writing called a promissory note with his proper hand thereunto subscribed, bearing date on the day and year last mentioned, and then and there delivered the said note to the said *Thomas*, by which the said *Samuel* promised to pay to the said *Thomas*, by the name of *Thomas Rogers* or his order, upon demand, the sum of fourteen pounds, being for value received by him the said *Samuel Rush*, by reason whereof, and also by force of the statute in such case lately made and provided, the said *Samuel* became liable to pay the said fourteen pounds to the said *Thomas* according to the tenor of the said note, and being

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being so liable, the said *Samuel* in consideration thereof afterwards, to wit, on the day and year last mentioned, at the town of *Bedford* aforesaid, in the county aforesaid, took upon himself, and then and there faithfully promised the said *Thomas* to pay him the said fourteen pounds according to the tenor of the said note.

For money lent, and had and received by defendant for plaintiff's use.

Demurrer.

AND the said *Samuel Rusb* in his own proper person comes and defends the force and injury, when, &c. and saith that the said bill and the matter therein contained, are not in law sufficient for the said *Thomas* to have or maintain his said action therefore against him the said *Samuel*, and for that the said *Samuel* hath no necessity, nor is he bound by the law of the land to answer, and this he is ready to verify; wherefore, for want of a sufficient bill of the said *Thomas* in this behalf, he the said *Samuel* prays judgment, and that the said *Thomas* may be precluded from having his said action against him, &c. and for causes of demurrer in law to the said bill of the said *Thomas*, he the said *Samuel* according to the form of the statute in such case lately made and provided, shews to the court here the causes following; for that it does not appear by the said bill of *what plea the said Samuel is impleaded in*, and for that the said declaration is altogether insufficient, uncertain, and wants form, &c.

Richard Comyns.

Joinder in demurrer.

AND the said *Thomas* inasmuch as he hath above alleged sufficient matter in law to have and maintain his said action against the said *Samuel*, which he is ready to verify, and which said matter the said *Samuel* doth not deny, nor in any manner answer the same, but altogether refuses to admit the truth thereof, he the said *Thomas* prays judgment, and that his damages by reason of the premisses may be adjudged to him, &c. *Judic. pro plaintiff, Trin. 10 Geo. II.*

R. Draper.

Reading *versus* Andrews.

By attorney,
for words.

—To wit. *Thomas Reading*, gent. one of the attornies of the court of our lord the King, being before

fore the King himself, according to the liberties and privileges of the same court, for such attorneys and other ministers of the same court, from time whereof the contrary is not in the memory of man, used and approved in the same, complains of *Samuel Andrews*, in the custody of the marshal, &c. for this, THAT WHEREAS the said *Thomas* is a good, true, honest and faithful subject of his present Majesty, and hath always behaved himself as such to his said present Majesty and his predecessors, from the time of his nativity hitherto, and during all the time aforesaid hath been of a good name, fame, credit and reputation, and free, innocent, clear and unsuspected of any perjury, forgery, deceit or any other such heinous crime, for all the time aforesaid hath lived and continued.

AND WHEREAS the said *Thomas* now is, and for divers years last past hath been one of the attorneys of the court aforesaid, and for all the time aforesaid hath well, honestly, and faithfully demeaned himself in his business of an attorney of the said court, according to the duty of his oath in that behalf, without any fraud, perjury or forgery, or the least suspicion thereof, by reason whereof the said *Thomas* not undeservedly gained the good opinion and esteem of his neighbours, and other his said Majesty's faithful subjects to whom he was known, but also acquired a comfortable subsistence for himself and his family by his business of an attorney as aforesaid, yet the said *Samuel* not being ignorant of the premisses, but devising and maliciously intending not only to injure the said *Thomas* in his good name, fame, credit and reputation, but to bring him in danger of his life, and of forfeiting all his goods and chattels, lands and tenements, upon the first day of *October*, in the year of our Lord one thousand seven hundred and thirty six, at *Islington*, in the county aforesaid, having discourse with divers of his said Majesty's faithful subjects of and concerning the said *Thomas*, and of and concerning his said business of an attorney, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers his said Majesty's faithful subjects, spoke, uttered and with a loud

DECLARATIONS, PLEADINGS, &c.

loud voice pronounced and published of him the said *Thomas*, and of his said business, these false, feigned and scandalous words following, that is to say, young *Reading* (meaning the said *Thomas*) is a perjured villain, and hath forged my hand (meaning the said *Samuel's* hand writing) and I (meaning the said *Samuel*) will have his ears (meaning the said *Thomas's* ears) in the pillory; and the said *Samuel* of his further malice afterwards, to wit, upon the same day and year abovementioned, at *Islington* aforesaid, having discourse with one *Rebecca Carter* of and concerning the said *Thomas*, and of and concerning his said business, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers others of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *Thomas*, and of his said business, these other false, feigned and scandalous words following, that is to say, he (meaning the said *Thomas*) hath forged thy hand (meaning the hand writing of the said *Rebecca Carter*); and the said *Samuel* of his further malice afterwards, to wit, upon the same day and year abovementioned, at *Islington* aforesaid, having discourse with one *Thomas Carter* of and concerning the said *Thomas Reading*, and of and concerning his said business, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers others of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *Thomas Reading*, and of his said business, these other false, feigned and scandalous words following, that is to say, young *Reading*, (meaning the said *Thomas*, the now plaintiff) hath forged my hand (meaning the hand writing of the said *Samuel*) and thy mother's hand (meaning the hand writing of *Rebecca Carter*, mother of the said *Thomas Carter*); and the said *Samuel* of his further malice, afterwards, to wit, upon the same day and year abovementioned, at *Islington* aforesaid, having discourse with the said *Thomas Carter* of and concerning the said *Thomas* the now plaintiff, and of and concerning his business, and also of and concerning *Rebecca Carter*,

Carter, mother of the said *Thomas Carter*, falsely and maliciously, openly and publicly, in the presence and hearing of divers others of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *Thomas*, and of his said business, these other false, feigned and scandalous words following, that is to say, *Tom Reading* (meaning the said *Thomas*, the now plaintiff) hath forged her hand (meaning the hand writing of the said *Rebecca Carter*); and the said *Samuel* of his further malice afterwards, to wit, on the same day and year abovementioned, at *Issington* aforesaid, having discourse with divers others of his said Majesty's faithful subjects of and concerning the said *Thomas*, and of and concerning his said business, then and there falsely and maliciously, openly and publicly, in the presence and hearing of divers others of his said Majesty's faithful subjects, spoke, uttered, and with a loud voice pronounced and published of him the said *Thomas*, and of his said business, these other false, feigned and scandalous words following, that is to say, *Reading* the lawyer (meaning the said *Thomas*, the now plaintiff) is a damned rogue in his business (meaning the business of the said *Thomas*, now plaintiff, as an attorney) and deserves hanging; by reason of the speaking and publishing of which said several false, feigned and scandalous words, the said *Thomas* is not only greatly injured in his good name, fame and reputation, but hath been obliged to undergo great labour and pains, and to lay out and expend divers large sums of money to clear up his innocence in this behalf, whereby he says he is prejudiced, and hath damage to the value of five hundred pounds, and thereupon he brings his suit, &c.

R. D.

Anonymous.

—To wit. *A B.* late of *C.* in the county aforesaid, yeoman, was summoned to answer *D.* who sues as well for himself as the poor of the parish of *C.* in the county aforesaid, in a plea that he render to the said *D.* who

For killing
an hare.

who as well, &c. and to the poor of the said parish fifteen pounds, which he owes to them, and unjustly detains, &c. whereupon the said *D.* who as well, &c. by *F. G.* his attorney, saith that the said *A.* after the beginning of the term of *St. Michael* now last past, to wit, on the thirteenth day of *November*, in the tenth year of the reign of the present lord the *King*, at the parish of *C.* aforesaid, in the said county (the said *A.* then not being in any manner qualified, licensed or authorized by the laws of this realm to keep or use any greyhound to kill and destroy the game) kept and used a certain greyhound to kill and destroy the game, contrary to the form of the statute in such case made and provided, by reason whereof and by force of the statute in such case made and provided, an action hath accrued to the said *D.* who as well, &c. to demand and have for himself and the poor of the parish aforesaid, of the said *A.* five pounds, part of the said fifteen pounds; and the said *D.* who as well, &c. further saith that the said *A.* afterwards, and after the beginning of the term of *St. Michael* now last past, to wit, on the said thirteenth day of *November*, in the year aforesaid, at the parish aforesaid, (the said *A.* then not being in any manner qualified, licensed, or authorized by the laws of this realm to keep or use any spaniel dog to kill and destroy the game) kept and used a certain spaniel dog to kill and destroy the game, contrary to the form of the statute in such case made and provided, by reason whereof, and by force of the statute in such case made and provided, an action hath accrued to the said *D.* who as well, &c. to demand and have for himself and the poor of the said parish of the said *A.* other five pounds, other part of the said fifteen pounds; and the said *D.* who as well, &c. further saith that the said *A.* afterwards and often *ut ante* (the said *A.* then not being in any manner qualified, licensed, or authorized, by the laws of this realm to keep or use any dog to kill and destroy the game) kept and used a certain dog called a pointer to kill and destroy the game, contrary to the form of the statute in such case made and provided, by reason whereof, and by force, &c. an action accrued to the said *D.* who as well, &c. to demand

(*ut ante*) other five pounds, residue of the said fifteen pounds; nevertheless the said *A.* (although often requested) hath not yet rendered the said fifteen pounds to the said *D.* who as well, &c. to the poor of the parish aforesaid, but hath altogether denied, and still doth deny to render the same to the said *D.* who as well, &c. and to the poor of the parish aforesaid, whereupon the said *D.* who as well, &c. saith, that he is damnified and prejudiced to the value of ten pounds, and therefore he brings suit, &c.

Stoughton versus Reynolds.

———To wit. *John Stoughton* complains of *George Reynolds*, doctor of laws, chancellor of the diocese of *Peterborough*, in the county of *Northampton*, and also official of *Richard Cumberland*, clerk, master of arts, archdeacon of the archdeaconry of *Northampton*, in the custody of the marshal of the marshalsea of our sovereign lord the King, before the King himself, FOR THAT WHEREAS before the issuing out of the writ hereafter mentioned, to wit, the seventh day of *April*, in the eighth year of the reign of our said lord the King that now is, at the parish of *All Saints* in the said county of *Northampton*, the said *John Stoughton*, then and still one of the inhabitants and parishioners of the said parish, was duly nominated and chosen by the inhabitants and parishioners of the said parish into the place and office of one of the churchwardens of the said parish, to serve in the said place and office for one whole year then next following.

For a false
return to a
mandamus.

AND WHEREAS the said *John Stoughton* ought, by the said *George Reynolds*, chancellor and official as aforesaid, to be admitted and sworn into the said place and office of one of the churchwardens of the said parish, well and faithfully to execute the said place and office.

AND WHEREAS the said *John Stoughton*, after his said nomination and election, did duly present and offer himself to be, by the said *George Reynolds*, chan-

U

cancellor

cellor and official as aforesaid, so admitted and sworn, and the said *George Reynolds*, chancellor and official as aforesaid, refused to admit and swear the said *John Stoughton* unto the said place and office of one of the churchwardens of the said parish.

AND WHEREAS the said *John Stoughton*, for his remedy in his said premisses, afterwards, to wit, on the twenty third day of *April*, in the eighth year of the reign of our said lord the King, at *Westminster*, in the county of *Middlesex*, prosecuted out of the court of our said lord the King, before the King himself (the said court then being at *Westminster*, in the said county of *Middlesex*) a certain writ of *mandamus* of our said lord the King, directed to the said *George Reynolds*, by the name of *George Reynolds*, doctor of laws, chancellor of the diocese of *Peterborough*, in the said county of *Northampton*, and to *Richard Cumberland*, clerk, master of arts, archdeacon of the archdeaconry of *Northampton*, in the said county, and each of them, his or their official or furrogate, or any other competent judge in that behalf, by which said writ our said lord the King commanded them by firmly injoining them, that immediately after the receipt of that writ they should without delay admit and swear, or cause to be admitted and sworn, the said *John Stoughton* into the said place and office of one of the churchwardens of the said parish, together with all the liberties, privileges and commodities to the said place and office belonging and appertaining, or should signify to the said lord the King cause to the contrary thereof, that the same complaint might not through their default be repeated to our said lord the King, and how they should execute that his said Majesty's writ should make it appear to our said lord the King, at *Westminster* on *Wednesday* next after one month from *Easter* day, then returning to our said lord the King that his said writ, and that they were not to omit, upon peril that might fall thereon; which said writ afterwards and before the return thereof, to wit, on the twenty fifth day of *April*, in the said eighth year of the reign of our said lord the King, at the parish

parish aforesaid, was delivered to the said *George Reynolds*, then until and at the return of the said writ being chancellor and official as aforesaid, to be executed in due form of law; nevertheless the said *George Reynolds*, well knowing the premises, but contriving and maliciously designing to injure and aggrrieve the said *John Stoughton*, did not at any time admit and swear, or cause to be admitted and sworn, the said *John Stoughton* into the said place and office of one of the churchwardens of the said parish, but at the return of the said writ at *Westminster*, in the said county of *Middlesex*, falsely and maliciously caused a certain answer to the said writ to be returned to our said lord the King, before the King himself, (the said court then being at *Westminster* aforesaid) therein certifying to our said lord the King (among other things) that the said *John Stoughton* in the said writ of *mandamus* named, was not nominated and chosen by the inhabitants and parishioners of the said parish of *All Saints*, into the place and office of one of the churchwardens of the said parish in the manner and form as in and by the said writ was suggested, as by the said writ and return now remaining of record in the said court of the said lord the King, before the King himself may appear; whereas in truth and fact, the said *John Stoughton* was nominated and chosen by the inhabitants and parishioners of the said parish of *All Saints* into the place and office of one of the churchwardens of the said parish, in manner and form as in and by the said writ was suggested.

AND WHEREAS in fact the matter of the answer above particularly mentioned to be returned to the said writ as aforesaid, was altogether false and contrary to the truth, by reason of which the said *John Stoughton* could not enjoy the said place and office of one of the churchwardens of the said parish as he ought to have done, but lost all the liberties, privileges and commodities to the said place and office belonging and appertaining, wherefore he saith that he is damnified to the value of five hundred pounds, and therefore he brings suit, &c.

Adams *versus* Lewis.

For erecting
floodgates,
and raising
banks, &c.
whereby
plaintiff's
meadow
was over-
flowed and
drowned.

— To wit. *Robert Adams* complains of *John Lewis*, in the custody of the marshal, &c. FOR THAT WHEREAS the said *Robert Adams* on the tenth day of *May*, in the year of our Lord one thousand seven hundred and thirty four, and long before and ever since was, and yet is possessed of two acres of meadow with the appurtenances within the parish of *B.* in the county aforesaid, next adjoining to a certain river called *Benwick*, he the said *John* intending to injure and damnify the said *Robert* on the said tenth day of *May*, in the year of our Lord one thousand seven hundred and thirty four aforesaid, and at divers other days and times between that day and the first day of *October* then next following, let down and shut, and kept and continued shut certain floodgates lately erected upon the said river below the said two acres of meadow, and also continued and kept up a certain bank or mill dam lately erected in the parish aforesaid below the said two acres of meadow, by reason and means whereof the water of the said river at divers times within the time abovementioned, was stopped, run back, and overflowed the said two acres of meadow, whereby the said *Robert* during all that time lost the use, profit and advantage of the said two acres of meadow.

AND WHEREAS the said *Robert* on the said tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and long before and ever since was, and yet is possessed of two acres of meadow with the appurtenances within the parish aforesaid, in the county aforesaid, next adjoining to a certain other river called *Benwick*, he the said *John* intending to injure and damnify the said *Robert* on the said tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and on divers other days and times between that day and the said first day of *October* then next following, let down and shut, and kept and continued shut certain other floodgates

gates lately erected upon the same river below the two acres of meadow last mentioned, by reason and means whereof the water of the same river at divers times within the time last abovementioned was stopped, run back and overflowed the last mentioned two acres of meadow, whereby the said *Robert* for all that time lost the use, profit and advantage of the same two acres of meadow.

AND WHEREAS the said *Robert* on the said tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and long before and ever since, was and yet is possessed of other two acres of meadow with the appurtenances, within the parish aforesaid, in the county aforesaid, next adjoining to a certain other river called *Benwick*, he the said *John* intending to injure and damnify the said *Robert*, on the said tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and on divers other days and times between that day and the said first day of *October* then next following, let down and shut, and kept and continued shut certain other flood-gates lately erected upon and near the said river below the said two acres of meadow last mentioned, and also continued and kept up a certain other stank or mill dam, and certain banks lately erected near the said river, and certain stakes, posts and boards lately put up and fixed in the said river in the parish aforesaid below the said two acres of meadow last mentioned, by reason and means whereof the water of the said river at divers times within the time last abovementioned was stopped, and overflowed the last mentioned two acres of meadow, whereby the said *Robert* during all that time lost the use, profit and advantage of the same two acres of meadow.

AND WHEREAS the said *Robert* on the said tenth day of *May*, in the said year of our Lord, one thousand seven hundred and thirty four, and long before and ever since was, and yet is possessed of other two acres of meadow with the appurtenances within the parish aforesaid, in the county aforesaid, next adjoining to a certain other river called *Benwick*, he the said

said

said *John* intending to injure and damnify the said *Robert*, on the said tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and on divers other days and times between that day and the said first day of *October* then next following, let down and shut, and kept and continued shut certain other floodgates lately erected upon the said river below the said last mentioned two acres of meadow, and also let down and shut, and kept and continued shut certain other floodgates lately erected near the said river, and also continued and kept up a certain wall, flank or mill dam, and a certain bank made of earth, mud, stones, stakes, boards, timber and posts lately erected in the parish aforesaid, below the said last mentioned two acres of meadow, by reason and means whereof the water of the said river at divers times within the time last mentioned was stopped, run back and overflowed the said last mentioned two acres of meadow, whereby the blade and hay of the said *Robert*, standing and being in and upon the said two last mentioned acres of meadow, was wholly spoiled, corrupted and consumed.

AND WHEREAS the said *Robert* on the said tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and long before and ever since was, and yet is possessed of other two acres of meadow with the appurtenances within the parish aforesaid, in the county aforesaid, next adjoining to a certain other river called *Benwick*, he the said *John* intending to injure and damnify the said *Robert*, on the tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty four, and on divers other days and times between that day and the said first day of *October* then next following, stopped and obstructed the course of the water of the said river in several places below the said last mentioned two acres of meadow ground, whereby the said *Robert* for all that time lost the use, profit and advantage of the same two acres of meadow, to the damage of the said *Robert* forty pounds, and thereof he brings suit, &c.

Rycraft

Rycraft *versus* Atkinson.

—To wit. *Lydia Atkinson*, late of *K.* in the said county of *W.* widow, administratrix of the goods and chattels which were of *John Atkinson*, late vicar of the parish church of *K.* in the said county at the time of his death, who died intestate, was attached to answer *Henry Rycraft* now vicar of the same church, in a plea of trespass on the case, &c. and whereupon the said *Henry* by *A. B.* his attorney complains, THAT WHEREAS by the laws of *England*, all and singular the rectors and vicars of rectories and vicarages in *England* are bound, and ought to repair and sustain all and singular the houses, buildings and tenements of and belonging to their respective rectories and vicarages, and to leave and transmit them to their successors in good and sufficient repair, and that if such rectors and vicars did not leave and transmit to their successors such premisses in good and sufficient repair, but permitted them to be out of repair and dilapidated, then the executors or administrators of such rectors and vicars respectively having sufficient of the goods and chattels of such rectors and vicars, are bound and ought to satisfy so much money as was sufficient for the necessary repairing of such houses, building and tenements as aforesaid.

For dilapidations.

AND WHEREAS the said *John Atkinson* in his life time, to wit, on the twenty second day of *November*, in the year of our Lord one thousand seven hundred and thirty three, at *K.* in the said county, was vicar of the parish of *K.* aforesaid, and was seised in right of the said vicarage of and in a certain messuage called the *Vicarage House*, and the outhouses and gardens thereunto belonging; and also of certain glebe lands lying and being in *K.* aforesaid, and afterwards, to wit, on the twenty third day of *November*, in the year aforesaid, died seised thereof, after whose death, to wit, on the twenty ninth day of *May*, in the year of our Lord one thousand seven hundred and thirty four, at *K.* aforesaid, the said *Henry* was lawfully presented, instituted

stituted and inducted into the said church and vicarage, and yet continues vicar thereof, and the said *Henry* doth aver, that at the time of the death of the said *John*, the said *Vicarage House* and all the outhouses, and all the fences of the garden and glebe lands aforesaid were dilapidated, ruinous, broken, and in great decay for want of due repairing thereof, and that the sums of money sufficient for the necessary repairing of the said premisses so ruinous and in decay at the time of the death of the said *John* will amount to the sum of fifty two pounds, one shilling and sixpence, to wit, at *K.* aforesaid, of which the said *Lydia* afterwards, to wit, on the first day of *October*, in the year last mentioned, there had notice, and was then and there required by the said *Henry* to pay the said sum; nevertheless the said *Lydia* contriving and fraudulently intending to deceive the said *Henry* in this behalf (although she had sufficient of the goods and chattels of the said *John* in her hands to be administered) hath not yet paid the said *Henry* the said fifty two pounds, one shilling and sixpence, or any part thereof, or any sum of money for and towards the repairs aforesaid, but hath hitherto altogether refused, and still doth refuse to pay him the same, to the damage of the said *Henry* one hundred pounds, and thereof he brings suit, &c.

Tenis versus Morgan.

For partition between joint tenants.

—To wit. *Edward Morgan* was summoned to answer *Lucius Tenis*, of a plea, wherefore WHEREAS the said *Lucius* and *Edward* held together and undivided three messuages, &c. with the appurtenances, in the parish of *O.* he the said *Edward* denieth to make partition thereof between them, according to the form of the statute in such case made and provided, and doth not permit the same to be done, unjustly and against the form of the statute, &c. and whereupon the said *Lucius* by *A. B.* his attorney saith, THAT WHEREAS they the said *Lucius* and *Edward* held together and undivided the tenements

ments aforesaid, with the appurtenances, whereof it belongeth to him the said *Lucius* to have one moiety of the tenements aforesaid with the appurtenances, in two equal parts to be divided, and it belongeth to the aforesaid *Edward* to have the other moiety, residue of the tenements aforesaid, with the appurtenances, to hold them in fealty, so that the said *Lucius* of his aforesaid moiety thereof happening to him of the tenements aforesaid with the appurtenances, and that the said *Edward* of his aforesaid moiety, residue of the tenements aforesaid, with the appurtenances happening to him the said *Edward*, may severally improve themselves, but the aforesaid *Edward* denieth to make partition thereof between them, according to the form of the statute in such case made and provided, and doth not permit the same to be done, unjustly and against the form of the statute aforesaid, whereupon he saith that he is prejudiced, and hath damage to the value of fifty pounds, and therefore he brings his suit, &c.

Lamb versus Girdler.

To his Majesty's Justices of the Bench.

—To wit. *Stephen Lamb*, by *J. M.* his attorney, ^{Bill against} complains of *Joseph Girdler*, serjeant at law, ^{a serjeant at} present ^{law.} here in court in his proper person, FOR THAT WHEREAS the said *Joseph*, on the first day of *April*, in the year of our Lord one thousand seven hundred and thirty four, at *Westminster*, in the said county of *Middlesex*, was indebted to the said *Stephen* in forty pounds of lawful money of *Great Britain*, as well for divers goods, wares and merchandizes of the said *Stephen*, and by him to the said *Joseph*, and at his special instance and request before that time sold and delivered, as also for work and labour in the trade of a farrier, by him the said *Stephen* for the said *Joseph*, and at his special instance and request before that time done and performed, and for materials and necessary things in and about that work, at the like special instance and request of the said *Joseph*, before that time found, used and provided; and being so indebted,

indebted, he the said *Joseph* in consideration thereof, afterwards, to wit, the same day and year, at *Westminster* aforesaid, undertook, and to the said *Stephen* then and there faithfully promised to pay him the said sum of money when he should afterwards be thereunto requested.

Then follows a Quantum meruit; a count for money paid, laid out and expended; and concludes in common form.

Plea.

AND the aforesaid *Joseph Girdler*, in his proper person comes and saith, that serjeants at the law, by the law of the land, and from the time of which the memory of man is not to the contrary, have used to be, and have been, and ought to be impleaded in this court by original writ issuing out of the chancery of our lord the King, and not by bill in the form aforesaid, and this he is ready to verify, (*and so forth*) wherefore he demands judgment whether the said court of our said lord the King here will take cognizance of the said plea without an original writ issuing out of the chancery aforesaid, (*and so forth*)

William Hawkins.

Demurrer.

AND the said *Stephen* saith that the aforesaid plea of the said *Joseph Girdler*, and the matter therein contained, is not sufficient in law to preclude the court here from taking cognizance of the said plea, to which said plea the said *Stephen* hath no need, nor is he obliged by law to answer; and this he is ready to verify, wherefore the said *Stephen* prays judgment, and that the said *Joseph* may further answer the said bill. *G. Eyre.*

Joinder in demurrer.

AND inasmuch as the said *Joseph* hath above alleged sufficient matter to preclude the said court here from taking cognizance of the said plea by bill in form aforesaid, without an original writ issuing out of the chancery aforesaid, which said matter the said *Joseph* is ready to verify, and the said *Stephen* doth not gainsay nor in any wise answer the same, the said *Joseph* prays judgment as before, if the said court will hold cognizance of the said plea without an original writ issuing out of the chancery aforesaid, (*and so forth*).

William Hawkins.

Judgment for the defendant.

Hall

Hall *versus* Worral.

—To wit. *Richard Hall* complains of *William Worral*, in custody of the marshal, &c. of a plea of trespass on the case, for this, THAT WHEREAS the said *Richard*, on the first day of *April*, in the year of our Lord one thousand seven hundred and thirty one, and long before, and ever since was, and yet is lawfully possessed of one ancient water fulling mill, with its appurtenances, situate in the parish of *B.* in the said county, and adjoining to a certain rivulet there called the *Ice*.

For raising flood gates and banks of a rivulet higher than usual by which plaintiff's fulling mill could not work for want of water.

AND WHEREAS the said rivulet from time immemorial did run and flow, and used to run and flow down in its ancient course unto the said fulling mill, and from thence into another ancient fulling mill called *Isham Mill*, in the parish of *Isham*, situate below the said mill of him the said *Richard*, and from thence further in its ancient course.

AND WHEREAS the said *Richard*, and all other the tenants and occupiers of the said fulling mill first above-mentioned, with the appurtenances for the time being, from time out of mind had and were accustomed, and ought to have the use and benefit of the water of the said rivulet for turning the wheel of the same last mentioned mill, nevertheless the said *William* maliciously designing to hinder and obstruct the said *Richard* in the use of his said mill, and to deprive him of the benefit of the water of the said rivulet for turning the wheel of his said mill, he the said *William*, on the first day of *April*, in the year aforesaid, the said *William* then, and long before and ever since being occupier of the said fulling mill, in the parish of *Isham*, raised two ancient gates called waste gates or flood gates, belonging to the said mill of him the said *William*, and made the said gates higher than they used and were wont to be, and also in the place of another ancient waste gate belonging to the said last mentioned mill, made and erected a new waste gate higher than the said ancient waste gate last mentioned was and used to be, and also

also raised and continued raised the banks of the dam belonging to the aforesaid mill of the said *Wm.* higher than they were used and accustomed to be, and the said gates so raised and made higher as aforesaid, and the said new erected gate, at divers times between the said first day of *April*, in the year aforesaid, and the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty three, kept and continued shut and let down, whereby the water of the said rivulet, at the said several times within the time last mentioned, below the said mill of the said *Richard* was stopped and hindered from running down in its ancient course more than it was wont or ought to be, and by reason thereof the wheel of the aforesaid mill of him the said *Richard*, at the several times last mentioned, was clogged with so much water that the said wheel could not be turned round by the course of the water of the said rivulet as it used to be, but the said *Richard* for all the time last mentioned lost the use, benefit and advantage of the said mill.

AND ALSO WHEREAS the said *Richard*, on the said first day of *April*, in the year of our Lord one thousand seven hundred and thirty one aforesaid, and long before, and ever since was, and yet is lawfully possessed of another ancient water fulling mill, with its appurtenances, situate in the parish of *B.* aforesaid, in the county aforesaid, adjoining to a certain rivulet there called the *Ice*.

AND WHEREAS the said rivulet from time immemorial did run and flow, and used to run and flow in its ancient course unto the last mentioned fulling mill, and from thence unto another ancient fulling mill called *Isbam Mill*, in the said parish of *Isbam*, situate below the said last mentioned mill of him the said *Richard*, and from thence further in its ancient course.

AND WHEREAS the said *Richard*, and all others the tenants and occupiers of the last mentioned fulling mill, in the parish of *B.* aforesaid, with the appurtenances for the time being, from time out of mind had and were accustomed, and ought to have the use and benefit of the water of the said rivulet for the turning the

the wheel of the last mentioned mill; nevertheless the said *William* maliciously designing to hinder and obstruct the said *Richard* in the use of his last mentioned mill, and to deprive him of the benefit of the water of the said rivulet for turning the wheel of the said last mentioned fulling mill, he the said *William*, on the said first day of *April*, in the year aforesaid, the said *William* then and long before, and ever since being occupier of the last mentioned fulling mill, in the said parish of *Ipsam*, raised two ancient gates called waste gates or flood gates, belonging to the last mentioned mill of him the said *William*, and made the said gates higher than they used and were wont to be, and also in the place of another ancient waste gate belonging to the last mentioned mill, made and erected a new waste gate higher than the last mentioned ancient waste gate was and used to be, and the two last mentioned ancient waste gates so raised and made higher as aforesaid, and the last mentioned new erected gate, at divers times between the said first day of *April*, in the year last mentioned, and the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty three, kept and continued shut and let down, whereby the water of the said rivulet, at the said several times within the time last mentioned, below the last mentioned mill of the said *Richard*, was stopped and hindered from running down in its ancient course more than it was wont or ought to be, and by reason thereof the wheel of the last mentioned mill of him the said *Richard*, at the several times last mentioned, was clogged with so much water that the said wheel could not be turned round by the course of the water of the said rivulet as it used to be, but the said *Richard* for all the time last mentioned lost the use, benefit and advantage of his said last mentioned mill.

AND WHEREAS ALSO the said *Richard*, on the said first day of *April*, in the year of our Lord one thousand seven hundred and thirty one aforesaid, and long before, and ever since was, and yet is lawfully possessed of another ancient water fulling mill, with its appurtenances, situate in the parish of B. afore-

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aforesaid, in the said county, and adjoining to a certain rivulet there called the *Ice*.

AND WHEREAS the said rivulet from time immemorial did run and flow, and used to run and flow down in its ancient course unto the last mentioned fulling mill, and from thence unto another ancient fulling mill, called *Isbam Mill*, in the parish of *Isbam*, situate below the last mentioned mill of him the said *Richard*, and from thence farther in its ancient course.

AND WHEREAS the said *Richard*, and all other the tenants and occupiers of the last mentioned fulling mill, in the parish of *B.* aforesaid, with the appurtenances for the time being, from time out of mind had and were accustomed, and ought to have the use and benefit of the water of the said rivulet for the turning the wheel of the last mentioned mill; nevertheless the said *William*, maliciously designing to injure and aggrieve the said *Richard*, on the said first day of *April*, in the year last mentioned, the said *William* then and long before, and ever since being occupier of the last mentioned fulling mill, in the said parish of *Isbam*, and at divers times between the said first day of *April*, in the year last mentioned, and the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty three aforesaid, at the parish of *Isbam* aforesaid, below the last mentioned mill of the said *Richard*, stopped and obstructed great part of the water of the said rivulet from running down in its ancient course last abovementioned, by reason of which the whole of the last mentioned mill of the said *Richard*, at divers times within the time last mentioned, was clogged with so much water that the said wheel could not be turned round by the course of the water of the said rivulet as it used and ought to be, but the said *Richard* for all the time last mentioned lost the use and enjoyment of his last mentioned mill, to the damage of the said *Richard* two hundred pounds, and thereupon he brings suit, &c.

Hoare

Hoare, &c. *versus* Pugh.

—To wit. *William Hoare, Thomas Sergison and Samuel Tomkins*, assignees of the goods, debts and chattels which were of *Robert Carr*, late of *Leeds*, in the county aforesaid, merchant, a bankrupt, according to the form of the statute concerning bankruptcy lately made and provided, complain of *John Pugh*, in custody of the marshal, &c. of a plea of trespass on the case, for this, THAT WHEREAS the said *John* on the twenty third day of *October*, in the year of our Lord one thousand seven hundred and thirty two, at *Leeds* aforesaid, was indebted to the said *William, Thomas and Samuel*, as assignees of the goods, debts and chattels of the said *Robert*, the bankrupt, in the sum of one hundred and fifty pounds of lawful money of *Great Britain*, for so much money of and belonging to them the said *William, Thomas and Samuel*, by the said *John*, for the use of the said *William, Thomas and Samuel*, before that time had and received; and being so indebted the said *John* in consideration thereof, afterwards, to wit, on the same day and year, at *Leeds* aforesaid, undertook, and to the said *William, Thomas and Samuel*, as assignees in form aforesaid, then and there faithfully promised, that he the said *John* the said sum of one hundred and fifty pounds to the said *William, Thomas and Samuel*, whenever after he should be thereto required, would well and truly pay and content.

At the suit of the assignees of a bankrupt, for money had and received.

Peters versus Harris.

—To wit. *Thomas Peters* complains of *James Harris*, in custody of the marshal, &c. in a plea of trespass on the case, for this, THAT WHEREAS the said *Thomas Peters*, on the tenth day of *May*, in the year of our Lord one thousand seven hundred and thirty three, and long before was, and continually afterwards hitherto hath been, and still is possessed of and in two closes of meadow with the appurtenances, lying and being in *Ramsay*, in the county aforesaid, near

For erecting a bay in a river.

to

to a certain stream or rivulet there called the *New Cut River*, part of the old river called the *River East*, the said *James Harris* well knowing thereof but devising and maliciously intending to wrong and injure the said *Thomas Peters*, and deprive him of the profit and benefit of his said closes, afterwards, to wit, upon the same day and year abovementioned, at *Ramsay* aforesaid, wrongfully and injuriously erected, put and placed a certain bay in and across the said stream or rivulet, and thereby then and there penned back and raised the water of the said stream or rivulet, and caused the same to overflow, drown and cover the said closes of the said *Thomas*, and to wash and break down the banks thereof, and hath from thence continually hitherto kept and continued the same bay there, and the said water so penned back and raised as aforesaid, and thereby overflowed the said closes and broke down the banks thereof, by means whereof the said *Thomas* during all the time aforesaid hath lost the profit and benefit of his said closes, whereby he saith that he is prejudiced and damaged to the value of one hundred pounds, and therefore, &c.

COVENANT.

EASTER TERM, 8 GEO. II.

May *versus* Carthew.

—To wit. **W**ALTER MAY complains of *Peter* On lease.
Carthew the younger, and *J. Manuder*
 in the custody of the marshal, &c. of a plea of covenant
 broken, for this, THAT WHEREAS by a certain in-
 denture made at *T.* in the county of *Devon*, upon the
 eleventh day of *January*, in the year of our Lord one
 thousand seven hundred and twenty seven, between the
 said parties, whereby the plaintiff, for and in con-
 sideration of defendant's performing the rents, covenants
 and agreements therein after mentioned, demised to
 the defendants all that messuage, tenement and dwel-
 ling house, situate, lying and being in the higher
 end of *Bampton Street*, in the town of *Tiverton* afore-
 said, To have and to hold all and singular the pre-
 mises with the appurtenances, and unto the defendants
 and their executors, from the twenty fifth day of *March*
 next ensuing the date thereof, for and during the term
 of four years to be fully compleat and ended, Yielding
 and paying therefore to plaintiff at the four feasts twelve
 pounds *per annum*,

*If any part of rent behind fourteen days, there being no
 sufficient distress, covenant for plaintiff to re-enter, defendants
 covenant to pay the rent in manner aforesaid, and also to leave
 and yield up at the end of the term the glass windows of
 the premises well and sufficiently glazed, the same being to
 be put in good repair by plaintiff before commencement, and*

DECLARATIONS, PLEADINGS, &c.

also at the end of the term to leave and yield up the premises to plaintiff in the same plight, posture and condition as they should find them in at their coming, notwithstanding any occasional alteration made by defendants during the term for their own conveniency. (A covenant that plaintiff should put the windows in good repair before the commencement of the term.)

All these covenants to be literally almost transcribed from the deed and articles of agreement. You need only recite those covenants in the count, for breach of which you declare upon.

As by the said indenture (among other things) more fully appears; by virtue of which demise the said *Peter Carthew* and *John Manuder* entered into the said demised premises, and were possessed thereof until the end and expiration of the said term of four years thereby granted, (the estate and interest of the said *Walter May* of and in the premises during all the said term of four years, and still continuing) and the said *Walter May* in fact saith, that he the said *Walter May*, before the commencement of the term of four years demised as aforesaid, to wit, upon the twentieth day of *March*, in the year aforesaid, put the said demised premises, and every part thereof, into good and sufficient repair, and well and sufficiently glazed all the windows belonging thereto, according to his covenant aforesaid; but the said *Walter May* further saith that the said *Peter Carthew* and *John Manuder*, or either of them, did not pay or cause to be paid unto the said *Walter* upon the feast of the *Annunciation of the Virgin Mary*, in the year of our Lord one thousand seven hundred and thirty two, the sum of three pounds of the rent aforesaid due and payable to him upon the said feast, which they ought to have done according to the form and effect of the said covenant in this behalf made, and the said three pounds are still unpaid to him; and the said *Walter May* further in fact saith that the said *Peter* and *John* did not at the end of the said term of four years leave and yield up unto the said *Walter* the glass windows belonging to the said premises, nor any of them, well and sufficiently

ciently glazed, although the same and every part thereof were put into good and sufficient repair by the said *Walter* by and before the commencement of the said term of four years as aforesaid, contrary to the form and effect of their said covenant in this behalf; and the said *Walter May* further in fact saith that the said *Peter* and *John*, at the end of the said term of four years, did not leave and yield up the premises, nor any part thereof, unto the said *Walter May*, nor to his assignees, in the same plight, posture and condition as they were put into at the commencement thereof as aforesaid, which they ought to have done according to the form and effect of their said covenant in this behalf made; but the said *Peter* and *John* kept and continued in possession of the premises, and used and occupied the same for a long time, to wit, for the space of a year and an half after the expiration of the said term of four years; and the said *Peter* and *John* during the said term of four years, for their own convenience made several alterations in the premises, to wit, in pulling down a wall, parcel of the said premises, in building up a brick chimney upon the said premises, in cutting out a door through another wall, parcel of the said premises, in making a passage from a hay loft, parcel of the said premises, and in railing and stopping up a door in a passage, parcel of the said premises, and continued the same alteration until, and at and after the end of the said term of four years, and did not at the end of the said term, nor since, put the same nor any of them into, nor restore them to the same plight, posture and condition as they were put into at the commencement of the same term of four years, nor leave nor yield up the premises to the said *Walter* in such plight and condition as aforesaid, contrary to the form and effect of their said covenant in this behalf made; and this the said *Walter* saith, that the said *Peter* and *John* (though often requested) have not kept their said covenant with the said *Walter*, but have broke the same, and have hitherto refused, and still do refuse to keep the same with him, whereby, &c.

R. Draper.

DECLARATIONS, PLEADINGS, &c.

AND the said *Peter Carthew* the younger, and *John Manuder*, by *C. B.* their attorney, come and defend the wrong and injury, when, &c. and say that the said *Walter* ought not to have or maintain his said action against them, because as to the breach of covenant first above assigned they say that they the said *Peter* and *John* paid to the said *Walter* the said three pounds of the rent aforesaid, due and payable to him upon the said feast of the *Annunciation of the Virgin Mary*, in the said year of our Lord one thousand seven hundred and thirty two as aforesaid, according to the form and effect of their said covenant in this behalf made, to wit, upon the said feast of the *Annunciation of the Virgin Mary*, in the said year of our Lord one thousand seven hundred and thirty two, at *Tiverton* aforesaid, and of this they put themselves upon the country, and the said *Walter* likewise; and as to the breach of covenant secondly above assigned, the said *Peter* and *John* say that the said *Peter* and *John* did at the end of the said term of four years leave and yield up unto the said *Walter* the glass windows belonging unto the said premises well and sufficiently glazed, according to the form and effect of their said covenant in this behalf made, and of this they also put themselves upon their country, and the said *Walter* likewise; and as to the breach of covenant last above assigned, the said *Peter* and *John* say that the said *Peter* and *John* did at the end of the said term of four years leave and yield up the said premises, and every part thereof, unto the said *Walter May* in the same plight, posture and condition as they were put into at the commencement thereof, according to the form and effect of the said covenant in this behalf made, and of this they put themselves, &c.

TRINITY TERM, 8 and 9 GEO. II.

Sutherland versus Robinson.

On inden-
ture of ap-
prentice-
ship.
Draper.

-----To wit. *Owen Sutherland* complains of *William Robinson*, in custody of the marshal, &c. of a plea of covenant broken, for this, THAT WHEREAS
by

by a certain indenture *tripartite* made at *Lyndhurst*, in the county aforesaid, on the sixteenth day of *February*, in the year of our Lord one thousand seven hundred and thirty one, between *Owen Sutherland* of *Lyndhurst*, in the county of *Southampton*, gent. of the first part, the said *Owen*, by the name of *O. Sutherland*, the son of the said *Owen Sutherland*, of the second part, and the said *William Robinson*, by the name of *William Robinson* of the parish of *Portsea*, in the said county, apothecary, of the third part, (the third part of which said indenture, sealed with the seal of the said *William Robinson*, he the said *Owen* brings here into court, bearing date the same day and year) he the said *Owen Sutherland*, of his own free will, and by and with the consent and approbation of his said father, testified by his being made a party thereunto, and by his signing and sealing thereof, did put and bind himself an apprentice to and with the said *William Robinson*, to learn his art, and with him after the manner of an apprentice to serve from the first day of *January* then last past, for and during and until the full end and term of seven years from thence next ensuing, and fully to be compleat and ended, during which said term the said apprentice his said master should and would faithfully serve, his secrets keep, all his lawful and honest commands every where gladly do; he should do no damage to his said master, nor fee to be done of others, but to his power should let or forthwith give notice to his said master of the same; the goods of his said master he should not waste, nor lend them unlawfully to any; hurt to his said master he should not do, cause or procure to be done; he should neither buy nor sell without his master's leave; taverns, inns or alehouses he should not haunt; at cards, dice, tables, or any other unlawful game he should not play; matrimony he should not contract, nor from the service of his said master day nor night absent himself, but in all things like an honest, diligent and faithful apprentice, should and would demean and behave himself towards his said master, and all his, during the said term: and the said *Owen Sutherland* for and in consideration of the cove-

nants

nants and agreements on the said *William Robinson's* part and behalf to be done and performed, for himself, his heirs, executors and administrators, did covenant, promise and agree to and with the said *William Robinson*, his executors and administrators, by the said indenture, in manner and form following (that is to say) that he the said *Owen Sutherland* should and would well, truly and faithfully serve the said *William Robinson* during all the term of his said apprenticeship, according to the purport, true intent and meaning of all and singular the articles abovementioned, without any fraud, deceit, damage or departure, and also should and would find, allow, provide and deliver unto the said *Owen Sutherland*, during the term of his said apprenticeship, sufficient and decent apparel of all sorts, both linen and woollen, so often as need should require, and thereof should and would save harmless, and indemnify the said *William Robinson*, his executors and administrators, and likewise should and would cause the said apparel to be repaired and amended so often as the same should want and stand in need of being repaired and amended; and the said *William Robinson* for and in consideration of the sum of sixty pounds of lawful money of *Great Britain* to him in hand paid, at or before the enfealing and delivering thereof by the said *Owen Sutherland*, the receipt whereof the said *William Robinson* did thereby acknowledge, and thereof and of every part and parcel thereof did acquit and discharge the said *Owen Sutherland*, his executors and administrators for ever by the said indenture, and also for and in consideration of the service of the said *Owen Sutherland* as aforesaid, for himself, his heirs, executors and administrators, did covenant, promise and agree to and with the said *Owen Sutherland*, his executors and administrators, by the said indenture in manner and form following, that is to say, that he the said *William Robinson* should and would teach and instruct, or cause the said *Owen Sutherland* to be taught and instructed, the best way and manner that he could, in the art and mystery of an apothecary which he then used, and also should and would find, allow and provide
unto

unto and for the said *Owen Sutherland* sufficient wholesome meat, drink, washing, lodging, and all other necessities (except apparel and mending, the same as abovementioned) both in sickness and in health, during all the said term of his apprenticeship, as by the said indenture now brought here into court, relation being thereunto had, may more fully appear; and the said *Owen Sutherland* in fact saith that the said *Owen* soon after the making the said indenture, to wit upon the said sixteenth day of *February*, in the year aforesaid, at *Lyndhurst* aforesaid, entered into his said service to serve the said *William Robinson* as his apprentice for the term aforesaid according to the true intent and meaning of the said indenture; but the said *Owen Sutherland* further saith that the said *William Robinson* from the making of the said indenture, and from the time of his the said *Owen Sutherland's* entering into the said service hitherto hath not taught nor instructed him the said *Owen*, nor caused him the said *Owen* to be taught and instructed in the said art and mystery of an apothecary, which he ought to have done according to the form and effect of his said covenant in this behalf made; and the said *Owen* further saith that the said *William Robinson* from the making the said indenture, and from the time of the said *Owen's* entering into the said service hitherto hath not found, allowed nor provided unto or for the said *Owen*, meat, drink, washing, lodging, or any other necessities (apparel and mending thereof excepted, as is abovementioned) which he ought to have done according to the form and effect of his said covenant in this behalf made; and this the said *Owen* saith that the said *William Robinson* (though often requested) hath not kept his said covenant with the said *Owen*, but hath broken the same, and hath hitherto refused, and still doth refuse to keep the same with him, whereby he saith that he is prejudiced and damaged to the value of one hundred pounds, and therefore he brings his suit, &c.

AND now at this day (that is to say) *Friday* next Imparlance. after the morrow of the *Holy Trinity* in this same term, until which day the said *William Robinson* had leave

Plea.

leave to imparle to the said bill, and then to answer the same as he should be advised before our lord the King at *Westminster* aforesaid, came as well the said *Owen* by his said attorney, as the said *William Robinson* by *Samuel Chandler* his attorney; and the same *William Robinson* defends the wrong and injury, when, &c. and saith that the said *Owen Sutherland* ought not to have or maintain his said action against him, because he saith that true it is that the said *Owen Sutherland* entered into his said service to serve the said *William Robinson* as his apprentice for the term aforesaid, according to the true intent and meaning of the said indenture as is above alledged, but the said *William Robinson* further saith that the said *Owen* after entering into his said service, to wit, upon the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty three, at *Lyndhurst* aforesaid, departed and absented himself from his said service, without the licence and consent of the said *William Robinson*, and from thence continually unto the time of exhibiting the said bill hath absented himself from his said service, without the licence and consent of the said *William Robinson*, contrary to the form and effect of the said indenture; and the said *William Robinson* further saith that from the time of his the said *Owen's* entering into his said service until the time of his departing and absenting himself from his said service as aforesaid, he the said *William Robinson* did teach and instruct the said *Owen*, and caused him to be taught and instructed in the said art and mystery of an apothecary, according to the form and effect of his said covenant in this behalf made; and the said *William Robinson* further saith that from the time of his the said *Owen's* entering into his said service until the time of his departing and absenting himself from his said service as aforesaid, he the said *William Robinson* did find, allow and provide unto and for the said *Owen* meat, drink, washing, lodging, and all other necessities (apparel and mending thereof excepted) according to the form and effect of his said covenant in this behalf made, and this he is ready to verify, where-

wherefore he prays judgment if the said *Owen* ought to have or maintain his said action against him.

AND the said *Owen* saith, that for any thing by the said *William Robinson* above in pleading alledged, he ought not to be barred from having his said action against him, because he saith that he the said *Owen* did not depart and absent himself from his said service without the licence and consent of the said *William Robinson*, as the said *William Robinson* hath above in his pleading alledged, and this he prays may be enquired of by the country, and the said *W. Robinson* doth the like; and the said *Owen* further saith that he the said *William Robinson* did not teach and instruct him the said *Owen*, nor cause him to be taught and instructed in the said art and mystery of an apothecary, as the said *William Robinson* hath above in his pleading alledged, and this he prays may be enquired of by the country, and the said *W. Robinson* doth the like; and the said *Owen* further saith that the said *William Robinson* did not find, allow, nor provide unto nor for the said *Owen*, meat, drink, washing, lodging, or any other necessities (apparel and mending thereof excepted) as the said *William Robinson* hath above in his pleading alledged, and this he prays may be enquired of by the country, and the said *William Robinson* doth the like; therefore, &c.

Replication.

First issue.

Second issue.

Third issue.

HILARY TERM, 9 GEO. II.

Bulstrode versus Gilborne.

—To wit. *Richard Bulstrode*, Esq; complains of *Edward Gilborne*, in custody of the marshal, &c. in a plea of covenant broken, for this, THAT WHEREAS by certain articles of agreement indented, made at *Westminster*, in the county aforesaid, upon the fifth day of *December*, in the year of our Lord one thousand seven hundred and thirty four, between the said *Richard*, by the name of *Richard Bulstrode*, of *Littleton*, in the county of *Middlesex*, Esq; of the one part, and the said *Edward*, by the name of *Edward Gilborne*, of *Clifford's Inn*, *London*, gent.

For breach of articles of agreement by deputy prothonotary of palace court.

gent. of the other part (the counterpart of which said articles sealed with the seal of the said *Edward*, he the said *Richard* brings here into court, bearing date the same day and year abovementioned) reciting, THAT WHEREAS the said *Richard Bulstrode* was seised for the term of his life of and in the office of prothonotary of the court of the *King's Palace*, at *Westminster*, and by virtue of the letters patent of *Charles* the second, late King of *England*, &c. made in the sixteenth year of his reign, and otherwise had power to execute the same office either by himself or his sufficient deputy or deputies, he the said *Richard Bulstrode*, in pursuance of the said power unto him given, for divers good causes and considerations him thereunto moving, did by the said articles ordain, constitute, depute and appoint the said *Edward Gilborne* to be his lawful and sufficient deputy and clerk in the said office, to do, execute and perform all and whatsoever belonged and appertained to the duty of the said office of prothonotary of the said court during the life of the said *Richard Bulstrode*, and the said *Richard Bulstrode* in consideration of the pains and labour to be taken by the said *Edward Gilborne* in and about the execution of the said office, did by the said articles give and allow unto the said *Edward Gilborne* all and singular the clerks fees mentioned and expressed in a schedule thereof made, and to the said articles of agreement annexed all and singular other clerks fees, incidents and profits to the clerks place of the said court belonging, or allowed, in as full and ample manner and form as *George Gilborne*, father of the said *Edward*, and he the said *Edward Gilborne*, or either of them had had and enjoyed the same, all which said clerks fees, incidents and profits abovementioned the said *Richard Bulstrode* thereby covenanted and granted to and with the said *Edward Gilborne* should and might be held and enjoyed, and had, received and taken by the said *Edward Gilborne* during the joint lives of the said *Richard Bulstrode*, Esq; and *Edward Gilborne*, without any let, hindrance, interruption or denial of, by or from him the said *Richard Bulstrode*, or any other person or persons lawfully claiming, or to claim, by, from or under

under him the said *Richard Bulstrode*, or his consent, act or default ; and the said *Edward Gilborne* for himself, his executors and administrators did covenant and grant by the said articles of agreement to and with the said *Richard Bulstrode*, his executors and administrators, that he the said *Edward Gilborne*, during his continuance in the said place or office, should and would faithfully and honestly demean and behave himself therein, and should from time to time well and truly pay unto the said *Richard Bulstrode*, and also to officers and ministers of the said court, all and every such sum and sums of money out of the profits as from time to time should be to them, and every of them respectively due and payable, if he the said *Edward Gilborne* should or might receive the same ; and that he the said *Edward Gilborne* should from time to time upon reasonable notice to him in that behalf given, make a just and true account in writing to him the said *Richard Bulstrode*, of all such sum and sums of money, fees, and other profits which from time to time should be due, as well to the said *Richard Bulstrode* as to the said judge's officers and ministers aforesaid. (*There are other covenants as in the articles, as that defendant should execute his office with his best skill and knowledge, also that he should preserve the rolls, records and books of the said court, also an indemnity to plaintiff ; then the table of fees which defendant was to receive for his trouble is recited, and then the plaintiff goes on overring*)—That the said *Richard* from the time of making the said articles hitherto hath been and continued seised, and still is seised for the term of his life of and in the said office of prothonotary in the said articles mentioned, and also that the said *Edward Gilborne* from the time of making the said articles hitherto, hath been and continued in the said office of deputy of the said *Richard* in his said office of prothonotary in the said articles mentioned, and during all the time aforesaid hath also been and continued in the said office of clerk of the said *Richard* in his said office of prothonotary in the said articles likewise mentioned ; and the said *Richard* further in fact saith, that he the said *Richard* being
so

DECLARATIONS, PLEADINGS, &c.

so prothonotary as aforesaid, and the said *Edward* being so deputy of the said *Richard* in his said office, and also clerk of the said *Richard* in his said office as aforesaid, he the said *Edward* after the making of the said articles, to wit, upon the twelfth day of *December*, in the said year one thousand seven hundred and thirty four, and at divers other days and times between that day and the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty five, at *Westminster* aforesaid, received divers sums of money due and payable to the said *Richard* as prothonotary as aforesaid, for fees and other profits belonging to his said office of prothonotary, and not given or allowed to the said *Edward Gilborne* by the said articles, amounting in the whole to a very large sum of money, to wit, to the sum of ten thousand pounds of lawful money of *Great Britain*, and that the said *Edward* hath not paid the same, nor any part thereof to the said *Richard*, which he ought to have done according to the form and effect of his said covenant in this behalf made; and this the said *Richard* saith that the said *Edward*, although often required, hath not kept his said covenant with the said *Richard*, but hath broke the same, and hath hitherto denied, and still doth deny to keep the same with him, whereby he saith that he is prejudiced and damaged to the value of ten thousand pounds, and therefore he brings his suit.

Defendant pleads a set-off according to the statute.

EASTER TERM, 8 GEO. II.

Randal versus Carter.

On a charter party.

—To wit. *Robert Randal* complains of *John Carter*, in the custody of the marshal, &c. in a plea of covenant broken, for this, THAT WHEREAS by a certain charter party of _____ indented and made at *Wareham*, in the county aforesaid, upon the eighth day of *February*, in the sixth year of the reign of his present Majesty, between the said *Robert*, by the name of *Robert Randal*, of the town and county of _____

of *Poole*, fail maker, and owner of the good sloop or vessel called the *Randal*, of *Poole*, of the burthen of fifty five tons, or thereabouts, now lying within the port of *Poole*, whereof *William Brumley* is master, of the one part, and *Thomas Linthorne*, of the town and county of *Poole*, mariner, and the said *John*, by the name of *John Carter*, of the said town and county, malster, of the other part (the counter part of which said charter party, sealed with the seals of the said *John* and *Thomas*, the said *Robert* brings here into court, bearing date the same day and year abovementioned) which said *Thomas* by process had in the court of our lord the King before the king himself (the said court then being at *Westminster*, in the county of *Middlesex*, in due manner is outlawed) he the said *Robert*, the owner, for the consideration therein after mentioned, had granted and letten to freight the said sloop and vessel unto the said *Thomas Linthorne* and *John Carter* for and during the space of eight calendar months certain, to begin and be accounted from the day of the said vessel's sailing over *Poole Bar*, and from and after the expiration of the said eight months certain for and during such further term as the said *Thomas Linthorne* and *John Carter* should please to keep the said sloop in their service and employment, not exceeding four calendar months more, or the end of the said voyage she might then be upon; and that the said *Thomas Linthorne* and *John Carter* had accordingly hired and taken the sloop for the said time or times, and upon the terms and conditions thereafter mentioned; whereupon the said owner for himself, his executors and administrators, did covenant, promise and agree to and with the said *Thomas Linthorne* and *John Carter*, their executors, administrators and assigns, by the said charter party, that is to say, that the said vessel should be tight, staunch and strong, and well and sufficiently tackled and apparelled with all things needful and necessary for such a vessel, and the voyage or voyages with her to be made during the said time or times, and that the said sloop should with the first and then next good wind and weather after the tenth day of that instant *February*, depart and sail from

from the said port of *Poole* with all such lawful goods, wares and merchandizes as the said *Thomas Linthorne* and *John Carter* should in the mean time be pleased to put on board, unto *Creswick* or *St. Martin's*, in *France*, and there receive on board all such lawful goods, wares and merchandizes as the said *Thomas Linthorne* or *John Carter*, their factors or assigns should direct and appoint, and being thence dispatched should directly sail, as wind and weather should permit, unto *St Peter's*, or such other place or places as the said freighters should order, in *Newfoundland*, and there deliver the said cargo, or part thereof, unto the said *Thomas Linthorne* and *John Carter*, their factors or assigns, and thence proceed and make one fishing trip on the banks of *Newfoundland*, thence to return to *St. Peter's*, and deliver such fish as should be brought, and there lay up and moor the said sloop during the remainder of the fishing season, or till the said *Thomas Linthorne* and *John Carter*, their executors, factors or assigns should think fit to load the said sloop with fish for a market, and being so loaded should thence sail as wind and weather should permit, unto such place or places of market as should be ordered, and there deliver the said cargo unto the said freighters order, and reload there, or at any other port, as they should think fit, with all such lawful goods, wares, and merchandizes as the said freighters, their factors or assigns should order and appoint, which the said vessel might reasonably carry over and alive, her victuals, tackle and apparel, and being thence dispatched should return and sail unto some port or ports in *England*, and there deliver the said cargo according to order; and if the eight months should be compleat and ended, should then and there make a right discharge and end of the said voyage, (the danger of the seas, fire, enemies, and restraint of kings, rulers and princes always excepted); but if the said eight months should not then be ended, should thence proceed as the said *Thomas Linthorne* and *John Carter* should order and appoint, during the continuance of the said charter party, until her arrival at some port in *England* for discharge, during which

which said service the said master should to the utmost of his skill and power well, duly and punctually obey and follow all such orders and directions as the said *Thomas Linthorne* and *John Carter*, their factors or assigns, should from time to time in writing give him for his government; in consideration whereof the said *Thomas Linthorne* and *John Carter*, for themselves, their executors and administrators, did covenant, promise and grant to and with the said *Robert Randal*, his executors, administrators and assigns, by the said charter party, that they the said *Thomas Linthorne* and *John Carter*, their executors, administrators or assigns, should and would, not only with all expedition dispatch the said vessel for proceeding on the said voyage or voyages intended by the said charter party, and clear her from the aforesaid service at some port in *England* within the aforesaid time or times aforesaid, and from time to time give the said master all necessary orders under their or one of their hands in writing for his government, and well and sufficiently victual and man the said vessel, but also well and truly pay, or cause to be paid unto the said *Robert Randal*, his executors, administrators and assigns, for the freight and hire of the said vessel, and the service of the said *William Bromley* on board, at and after the rate of sixteen pounds of lawful *British* money per month, for each and every calendar month, to commence as aforesaid, that the said sloop or vessel should be detained in the service of the said *Thomas Linthorne* and *John Carter*, their factors or assigns, by virtue of the said charter party, and so in proportion for a lesser time than a month, the one half at twenty days, and the other half at forty days after the discharge of the said vessel, with all port charges as the same should become due during the said voyage; and to the true performance of all and singular the covenants and agreements aforesaid, the said parties did bind themselves, their executors and administrators, either to the other, in the penal sum of two hundred pounds of lawful money of *Great Britain*, well and truly to be paid, firmly by the said charter party, as by the said charter party more fully appears; and the

the said *Robert Randal* in fact saith, that the said sloop or vessel soon after the making the said charter party, and with the first and next good wind and weather after the tenth day of *February*, in the said charter party mentioned, to wit, upon the twelfth day of *February*, in the sixth year aforesaid, departed and sailed from the said port of *Poole*, and upon the same day sailed over *Poole* bar, in the said charter party mentioned, in and upon the said voyage in the said charter party mentioned, and continued and was detained in the service of the said *Thomas Linthorne* and *John Carter* in and upon the said voyage for a long time, to wit, for the space of twelve calendar months, commencing from the said vessel's sailing over *Poole* bar in and upon the said voyage as aforesaid, and then arrived in safety at a port in *England*, to wit, at the port of *Poole* aforesaid, and finished her said voyage, and was then and there discharged, the said *William Bromley* during all the time aforesaid serving on board as master of the said vessel; and the said *Robert Randal* further saith that the said *Thomas Linthorne*, who, &c. and *John Carter*, or either of them, have not paid, nor caused to be paid to the said *Randal* for the freight and hire of the said vessel and service of the said *William Bromley* on board her as aforesaid, the said rate of sixteen pounds *per* month for each and every calendar month, commencing as aforesaid, that the said sloop or vessel was detained in the service of the said *Thomas Linthorne* and *John Carter*, by virtue of the said charter party, and so in proportion for a lesser time than a month, which they ought to have paid to the said *Robert*, the one half at twenty days and the other half at forty days after the discharge of the said vessel, according to the form and effect of their said covenant in this behalf made, and which respective days are long since past; and the said *Robert Randal* further saith, that the port charges of the said vessel during the said voyage amounted to the sum of seventy pounds, to wit, upon the said twelfth day of *February*, in the seventh year of the reign of his present Majesty, at *Wareham* aforesaid, whereof the said *Thomas* and *John* then and there had notice; and yet

yet the said *Thomas* and *John*, or either of them, have not paid, nor caused to be paid to the said *Robert* the said port charges, nor any part thereof, which they ought to have done according to the form and effect of their said covenant in this behalf made; and the said *Robert Randal* further saith, that the said *Thomas* and *John*, or either of them, during the said voyage, did not well and sufficiently man the said vessel, which they ought to have done according to the form and effect of their said covenant in this behalf made; and thus the said *Robert* saith, that the said *Thomas*, who, &c. and *John*, (though often requested) have not kept their said covenant with the said *Robert*, but have broken the same, and have hitherto refused, and still do refuse to keep the same with him, whereby he saith that he is prejudiced and damaged to the value of three hundred pounds, &c.

R. Draper.

AND the said *John Carter*, by *Henry Morgan* his attorney, comes and defends the wrong and injury, when, &c. and saith that the said *Robert Randal* ought not to have or maintain his said action against him, because as to the breach of covenant first above assigned, protesting that the said sloop or vessel did not continue nor was detained in the service of the said *Thomas Linthorne* and *John Carter* for the space of twelve calendar months, as by the said declaration is above supposed, for plea in this behalf, the said *John Carter* saith that the said *Thomas Linthorne*, who, &c. and *John Carter* well and truly paid to the said *Robert Randal* for the freight and hire of the said vessel and service of the said *William Brumely* on board her the said rate of sixteen pounds *per* month for each and every calendar month, commencing as in the said charter party is mentioned, that the said sloop or vessel was detained in the service of them the said *Thomas Linthorne* and *John Carter*, by virtue of the said charter party, and so in proportion for a lesser time than a month, according to the form and effect of their said covenant in this behalf made, to wit, at *Wareham* aforesaid, and of this the said *J. Carter* puts himself upon his country, and *R.* doth so likewise; and the said *John Carter* as to the breach of covenant secondly

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condly above assigned, protesting that the port charges of the said vessel during the said voyage did not amount to the said sum of seventy pounds, as by the said declaration is above supposed, for plea in this behalf, the said *John Carter* saith, That they the said *Thomas Linthorne* who, &c. and *John Carter* well and truly paid all port charges that became due for or in respect of the said vessel during the said voyage, according to the form and effect of their said covenant in this behalf made, to wit, at *Wareham* aforesaid, and of this the said *John Carter* puts himself upon his country, and *R.* doth so likewise; and the said *John Carter* as to the breach of covenant lastly above assigned saith, that the said *Thomas* and *John* did well and sufficiently moor the said vessel during the said voyage according to the form and effect of their said covenant in this behalf made, to wit, at *Wareham* aforesaid, and of this the said *John Carter* puts himself upon his country, and *Robert* doth so likewise.

R. Draper.

MICHAELMAS TERM, 10 GEO. II.

Goodwin versus Mitchel.

On a contract for the purchase of salt.

—To wit. *James Goodwin* complains of *William Mitchel*, in custody of the marshal, &c. of a plea of covenants broken, FOR THAT WHEREAS by certain articles of agreement indented, made at *London*, to wit, in the parish of *St. Mary le Bow*, in the ward of *Cheap*, on the tenth day of *February*, in the year of our Lord one thousand seven hundred and twenty eight, between one *Harry Bower*, *Richard Chalk*, *Edward Pit*, the said *William Mitchel* and *Richard Jeffrey* of the one part, and the said *James Goodwin* of the other part, the one part of which said articles, sealed with the seal of the said *William Mitchel*, the said *James* brings here into court, bearing date the same day and year abovesaid, reciting, THAT WHEREAS the said *James* had agreed for and bought of the said *Harry Bower*, *Richard Chalk*, *Edward Pit*, *William Mitchel* and *Richard Jeffrey*

Jeffrey all the *sal catharticum amarum* or bitter purging salt, commonly called or known by the name of *Epsom salt*, which the said *Harry Bower*, *Richard Chalk*, *Edward Pit*, *William Mitchel* and *Richard Jeffrey*, any or either of them should or might make, purify or refine from the day of the date of the said articles, for and during, and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended, provided the same in any one year did not exceed in the whole twenty three tons, and upon the conditions, agreements, restrictions, and provisions therein after mentioned, it was by the said articles agreed upon by and between the said parties to the said articles, and the said *Harry Bower*, *Richard Chalk*, *Edward Pit*, *William Mitchel* and *Richard Jeffrey*, and each and every of them severally, and apart for and concerning the acts, deeds and defaults of himself only, and not any of them jointly with any other of them, or for or concerning the acts, deeds and defaults of any other of them, did covenant and agree to and with the said *James Goodwin* that they the said *Henry Bower*, *Richard Chalk*, *Edward Pit*, *William Mitchel* and *Richard Jeffrey* should and would from time to time, and at all times during the said term of seven years, to be computed from the day of the date of the said articles, put into clean and dry casks, and then ship and put on board, or cause to be shipped and put on board some good ship or vessel in some or one of the creeks or lakes at or near *Lymington*, in the county of *Southampton*, that should be then from time to time bound directly from thence to *London*, all the said *sal catharticum amarum* or bitter purging salt, commonly called or known by the name of *Epsom salt*, which they, any or either of them should make, purify and refine aforesaid, and also direct and consign all such *sal catharticum amarum* to be shipped as aforesaid to the said *James Goodwin*, and also should and would send by the post to the said *James Goodwin* an account or invoice of each and every cask and casks from time to time when and as soon as the same should be from time to

time shipped as aforesaid, and that the said *Harry Bower, Richard Chalk, Edward Pit, William Mitchel* and *Richard Jeffrey* should and would from time to time and at all times during the time aforesaid, well and truly refine, purify and make white, dry and merchantable all such *sal catharticum amarum* so by them respectively to be shipped for the said *James Goodwin* as aforesaid, and that they the said *Harry Bower, Richard Chalk, Edward Pit, William Mitchel* and *Richard Jeffrey*, any or either of them should not nor would during the said term of seven years to be computed as aforesaid, sell or deliver to any person or persons whomsoever above the quantity of one pound a piece *per* week of such *sal catharticum amarum* so by them to be made as aforesaid, without the special order, consent or direction of the said *James Goodwin*, under his hand for that purpose first had and obtained; and the said *James Goodwin* for himself, his executors and administrators did covenant, promise and agreee to and with the said *Harry Bower, Richard Chalk, Edward Pit, William Mitchel* and *Richard Jeffrey*, and each and every of them by the said articles in manner and form following, that is to say, That the said *James Goodwin*, his executors and administrators should and would from time to time, and at all and every time and times during the said term of seven years to be computed as aforesaid, well and truly pay or cause to be paid unto the said *Harry Bower, Richard Chalk, Edward Pit, William Mitchel* and *Richard Jeffrey* or to their some or one of their order, the full sum of twelve shillings and sixpence of good and lawful money of *Great Britain* for each and every hundred weight of the said *sal catharticum amarum* so by him bought as aforesaid, within one month next after the shipping or putting the same on board any ship or vessel in any of the creeks or lakes at or near *Lymington* as aforesaid, and that it should and might be lawful to and for the said *Harry Bower, Richard Chalk, Edward Pit, William Mitchel* and *Richard Jeffrey*, and each and every of them, to vend, sell and deliver to any person or persons whomsoever, one pound each

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per week and no more of such *sal catharticum amarum* by them respectively to be made during the said term of seven years to be computed as aforesaid, without the order, direction or consent of the said *James Goodwin* as aforesaid, any covenant, clause, article or thing in the said articles contained to the contrary in any wise notwithstanding; Provided always and nevertheless it was covenanted and agreed on by and between the said parties to the said articles and every of them, and it was the true intent and meaning of them and every of them, and of the said articles, that the bitter purging salt commonly called *sal mirabile* or *sal Glaubury cristalinum* was not included in the said articles, but that the said *Harry Bower*, *Richard Chalk*, *Edward Pit*, *William Mitchel* and *Richard Jeffrey*, and each and every of them should and might from time to time, and at all times during the said term of seven years to be computed as aforesaid, make, vend, sell and deliver all such quantity or quantities of the said purging salt commonly called *sal mirabile* or *sal Glaubury cristalinum*, as they, any or either of them should think fit, without the consent, order or direction of the said *James Goodwin*, any article, covenant or thing in the said articles contained to the contrary thereof in any wise notwithstanding, as by the said articles may more fully appear; and the said *James Goodwin* in fact saith, that the said *William Mitchel* after the making of the said articles, to wit, in every one of the five years next immediately following, after the date of the said articles at *London* aforesaid, in the parish and ward aforesaid, made, purified and refined divers great quantities, in the whole amounting to twenty tons of the said *sal catharticum amarum* in each of these years, and that there were frequently from time to time in each of these years, sundry ships lying in some or other of the creeks at or near *Lymington* aforesaid, bound directly from thence to *London*, whereof the said *William Mitchel* had notice; yet the said *William Mitchel* did not at any time or times whatsoever, ship or cause to be shipped in any of these ships, or in any other ship whatsoever,

whatsoever, any *sal catharticum* whatsoever for the said *James*, or direct or consign any part thereof to the said *James Goodwin*, but in this the said *William Mitchel* wholly failed, against the form and effect of the said articles, and of the aforesaid covenant of the said *William Mitchel* made in that behalf as aforesaid; and the said *James* further saith, that he the said *William* after making the said articles at divers times, to wit, at five hundred several times within the first four years next after the date of the said articles at *London* aforesaid, in the parish and ward aforesaid, sold and delivered to divers other persons than the said *James* divers large quantities, to wit, five hundred pounds weight at each of these five hundred times of the said *sal catharticum amarum* so by him the said *William* made, purified and refined, after the making of the said articles, without the consent or direction of the said *James* under his hand for that purpose first had or obtained against the form and effect of the said articles, and of the said covenant of the said *William* in that behalf made as aforesaid, and this the said *William* (although often required) hath not kept to the said *James* the covenants aforesaid made between the said *William* and *James*, but hath broken the same, and to keep the same to him hitherto hath refused, and still doth wholly refuse, to the said *James* his damage of five hundred pounds, and thereupon he brings his suit, &c.

Plea.

And the said *William* defends the wrong and injury, when, &c. and says that the said *James* ought not to have or maintain his said action against him, because he says, that after the making of the said articles of agreement, and before the time of exhibiting the bill of the said *James*, to wit, upon the thirtieth day of *September*, in the year of our Lord one thousand seven hundred and thirty, at *London* aforesaid, in the parish and ward aforesaid, he paid to the said *James* the sum of one pound, one shilling in full satisfaction of all damages sustained by the said *James* by reason of the breach of covenants aforesaid, which said sum of one pound, one shilling, the said *James* then and there received

ceived of the said *William* in full satisfaction of the said damages, and this he is ready to verify, wherefore he prays judgment if the said *James* ought to have or maintain his action against him for the same.

R. Draper.

AND the said *James* saith, that by reason of any thing in the said plea by the aforesaid *William* above alledged, he ought not to be precluded from having and maintaining his said action against him, because protesting that the said *William* did not pay to the said *James* the said sum of one pound, one shilling in full satisfaction of all damages sustained by the said *James* by reason of the breach of the covenants aforesaid, as the said *William* hath by his said plea above supposed, for a reply in this behalf, the said *James* saith, that he did not receive the aforesaid sum of one pound, one shilling of the said *William* in full satisfaction of the damages aforesaid, in manner and form as the aforesaid *William* hath in pleading above alledged, and this he prays may be inquired of by the country, and the aforesaid *William* doth the same likewise, therefore, &c.

E. Bootle.

Same *versus* Same.

—To wit. *James Goodwin* complains of *William Mitchel*, being in the custody of the marshal, &c. of a plea of covenants broken, FOR THAT WHEREAS by certain articles of agreement indented, made and fully agreed upon at *London* aforesaid, to wit, at the parish of *St. Mary le Bow*, in the ward of *Cheap*, on the first day of *October*, in the fourth year of the reign of our sovereign lord *George the Second*, by the grace of God of *Great Britain, France and Ireland*, King, defender of the Faith, and in the year of our Lord one thousand seven hundred and thirty, between the said *William Mitchel*, and one *Edward Mitchel*, by the names of *William Mitchel* of *Lymington*, in the county of *Southampton*, barber, and *Edward Mitchel* of *London* aforesaid, barber, one of the sons of the said *William Mitchel*

On articles of agreement for consigning merchandise.

Mitchel of the one part, and the said *James Goodwin*, by the name of *James Goodwin*, of the city of *Westminster*, chymist, of the other part, (the one part of which said articles, sealed with the seal of the said *William*, and bearing date the same day and year aforesaid, the said *James* brings here into court) the said *William* for himself, his executors and administrators and every of them, and the said *Edward Mitchel* for himself, his executors and administrators and for every of them did, and each and every of them respectively as aforesaid, covenant, promise and agree, and with the said *James*, his executors, administrators and assigns and every of them, by the said articles in manner and form following, that is to say, that they the said *William* and *Edward* and each of them, their and each and every of their executors and administrators, should and would yearly and every year during the term of five years next ensuing, to commence and be computed from the feast day of *St. Michael the Archangel* last past before the date of the said articles, for the consideration therein mentioned, send, consign and deliver to and for the said *James*, his executors, administrators and assigns, on board some good ship or vessel in some one of the creeks within the port of *Lymington* aforesaid that should be bound immediately thence to *London*, as much single refined and double refined *sal catharticum amarum*, commonly called *Epsom salt*, as they the said *William* and *Edward* or either of them, their or either of their executors or administrators conveniently could, so that the whole quantity in any one year during the term aforesaid did not exceed twelve ton, and that the said *Epsom salt* so to be sent, consigned and delivered to the said *James*, his executors, administrators and assigns as aforesaid, should be good merchantable salt, fit for market; and that they the said *William* and *Edward* or either of them, their or either of their executors and administrators should not nor would during the term aforesaid, vend, sell or deliver, directly or indirectly, to any other person or persons whomsoever, any *sal catharticum amarum*, or

Epsom

Epsom salt whatsoever, save and except two hundred weight thereof in each and every year during the said term, in which they the said *William* and *Edward*, their executors and administrators should and might dispose of at their free will and pleasure; and the said *James* for himself, his executors and administrators and for every of them, did covenant, promise and grant to and with the said *William* and *Edward* and each of them, their and each of their executors, administrators and assigns and every of them, by the said articles, in manner and form following, that is to say, that he the said *James*, his executors and administrators should and would within thirty days next after the delivery of each and every parcel or quantity of the said *Epsom* salt as aforesaid, well and truly pay or cause to be paid to the said *William* and *Edward*, their executors, administrators and assigns, some or one of them, for each and every hundred weight thereof that should be double refined, the sum of fifteen shillings of lawful *British* money, and so in proportion for every greater or lesser quantity, and for each and every hundred weight of the said *Epsom* salt that should be only single refined, the sum of twelve shillings and sixpence of like lawful money, and so in proportion for every greater or lesser quantity thereof, and that the said *William* and *Edward*, their executors and administrators should and might yearly and every year during the term aforesaid, vend, sell and dispose of two hundred weight of *sal catharticum amarum* or *Epsom* salt, at his, their, any or either of their free will and pleasure, any articles or covenant in the said articles contained to the contrary thereof in any wise notwithstanding; and that the said *James*, his executors, administrators or assigns, or either of them, should not nor would at any time or times thereafter during the term aforesaid, directly or indirectly buy, ingross, or otherwise secure or get into his or their, or either of their custody or power, any candy bitters, liquors, or other materials whatsoever, or of what kind soever, within the said county of *Southampton*, for the making of *sal catharticum amarum*, or from whence the same is usually refined,

refined, purified or extracted, the contract or agreement which the said *James* had before that time made, and which was then subsisting with one *Kenneth Mackenzie*, Esq; only excepted and foreprized; Provided always, and it was the true intent and meaning of the said articles and of the parties thereunto and every of them, that they the said *William* and *Edward* and each of them, their and each and every of their executors, administrators and assigns, should and might make, refine, purify, sell, deliver and dispose of all the *sal Glaubury* or *chrisalimum sal*, that they, any, or either of them should make, refine or purify during the term aforesaid, at their, any or either of their free will and pleasure, the said articles, or any article, covenant or thing therein contained to the contrary notwithstanding, as by the said articles relation being thereunto had amongst other things may more fully appear; and the said *James* further says, that although he the said *James* from the time of making the said articles hitherto at *London* aforesaid, in the parish and ward aforesaid, fully, well and faithfully performed and fulfilled all things contained in the said articles which on his part were to be performed and fulfilled, yet the said *William* hath not performed or fulfilled any thing contained in the said articles on his part to be performed and fulfilled; and in fact the said *James* saith, that after the making of the said articles in each and every of the four years between the feast of St. *Michael the Archangel* last past before the date of the said articles, and the feast day of St. *Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty four, there were frequently many good ships in some of the creeks within the port of *Lymington* aforesaid, that were bound immediately thence to *London*, whereof the said *William* at *London* aforesaid in the parish and ward aforesaid had notice, and that the said *William* could in every one of these four years have conveniently sent, consigned and delivered to and for the said *James*, on board these ships or some of them, the full and whole quantity of twelve tuns of the said *sal catharticum amarum*, commonly called

called *Epsom* salt, whereof the said *William* had also notice; yet the said *William* did not in each of those years, or in any of them, send, consign or deliver to or for the said *James* on board those ships, or any of them, or any wise otherwise howsoever, the said twelve tuns of the said *sal catharticum amarum*, commonly called *Epsom* salt, or any part thereof, but the doing thereof wholly neglected and refused, to wit, at *London* aforesaid, in the parish and ward aforesaid, contrary to the form and effect of the said articles and of the covenants aforesaid of the said *William* in that behalf made as aforesaid; and the said *James* further saith, that the said *William* in each and every of the said four years, and after the making the said articles at *London* aforesaid, in the parish and ward aforesaid, vended, sold and delivered to divers other persons divers great quantities, to wit, twelve tuns of *sal catharticum amarum*, commonly called *Epsom* salt, in each of those four years, over and above the said two hundred weight in each year allowed to be sold by him by the said articles, against the form and effect of the said articles, and of the aforesaid covenant of the said *William* in that behalf made as aforesaid, and this the said *William* (although often requested) hath not kept, but broke the covenants aforesaid made between him and the said *James* as aforesaid, and to keep the same to the said *James* hath hitherto altogether refused, and still refuses, to the said *James* his damage of one hundred pounds, &c.

AND the said *William* defends the wrong and injury, when, &c. and says that the said *James* ought not to have or maintain his said action against him, because as to the breach of covenant first abovementioned he saith, that he the said *William* in any of the said four years abovementioned, could not conveniently send, consign and deliver to and for the said *James* the said twelve tuns of *sal catharticum amarum*, commonly called *Epsom* salt, nor any part thereof, as the said *James* hath by his said declaration above alledged, and of this he puts himself upon his country; and the said *William* as to the breach of covenant last abovementioned

mentioned saith, that he the said *William* did not within the said four years abovementioned, vend, sell or deliver to any person or persons any quantity or quantities of the said *sal catharticum amarum*, commonly called *Epsom* salt, over and above the said two hundred weight in each year allowed to be sold by him by the said articles, as the said *James* hath above also in his said declaration alledged, and of this also he puts himself on his country, &c.

R. Draper.

MICHAELMAS TERM, 10 GEO. II.

Wright *versus* Harris,

For rent.

—To wit. *George Wright* complains of *John Harris*, in the custody of the marshal, &c. of a plea of covenant broken, for this, THAT WHEREAS by certain articles of agreement made on the twenty seventh day of *November*, in the year of our Lord one thousand seven hundred and thirty four, at *Westminster*, in the said county of *Middlesex*, between *George Wright* of the one part, and the said *John Harris* of the other part, one part whereof, sealed with the seal of the said *John Harris*, bearing date the same day and year aforesaid, the said *George* now shews to the court here, he the said *George* did covenant, grant and agree to and with the said *John*, that he the said *John* should have, hold, use, occupy, possess and enjoy the dwelling house which he then lived in, from *Christmas* then next for and during and unto the full end and term of seven years fully to be complete and ended, provided the said *John Harris* should pay or cause to be paid unto the said *George*, his executors, administrators or assigns, the sum of five pounds every quarter day, the first payment to be made on the twenty fifth day of *March* next ensuing the date of the said articles, and so to continue to pay the like sum of five pounds of lawful money of *Great Britain* every quarter day during the term aforesaid,

to the said *George*, his executors, administrators or assigns; and the said *John* did by the said articles covenant, promise and agree to and with the said *George*, his executors, administrators or assigns, to pay the said sum of lawful money of *Great Britain* every quarter day to the said *George*, his executors, administrators or assigns, as by the said articles more fully appears, by virtue of which said demise the said *John* entered into the said tenement and premises, and was and still is thereof possessed; and the said *George* in fact saith, that the said *John*, being so possessed of the said demised premises as aforesaid, he the said *John* hath not paid to the said *George* the sum of five pounds of the said rent abovementioned, due and payable to the said *George* for one quarter of a year ending the twenty fourth day of *June*, in the year of our Lord one thousand seven hundred and thirty six, which he ought to have done according to the form and effect of the said covenant in this behalf made, and this the said *George* saith, that the said *John* hath not kept his said covenant made by him the said *John* to the said *George*, though often requested, but hath broken the same, and hath hitherto refused, and still doth refuse to keep the same with him, whereupon he saith that he is prejudiced and hath damage to the value of twenty pounds, and therefore he brings his suit, &c.

AND the said *John* by *A. B.* his attorney comes and defends the wrong and injury, when, &c. and saith that the said *George* ought not to have or maintain his said action against him, to recover any further damages than the said sum of five pounds, because he saith, that he the said *John* was present at the said demised dwelling house on the said twenty fourth day of *June*, being the same day on which the said five pounds became due and payable as aforesaid, for the space of three hours next before the setting of the sun of the same day, and also at the setting of the sun of the same day, and during all the time aforesaid was there ready to pay, and offered to pay the said five pounds to him

Plea of tender at the day until the setting of the sun.

him the said *George*, but that neither he the said *George*, or any other person on his behalf during the said time, or any part thereof, was there ready to receive the same, and that he the said *John* always since that day hath been, and still is ready to pay the same to the said *George*, and bringeth the said five pounds here into court ready to be paid to the said *George*, and if he is willing to receive the same, and this he is ready to verify, wherefore he prays judgment if the said *George* ought to have his said action against him to recover any further damages than the said sum of five pounds.

J. Hammett.

Demurrer.

AND the said *George* says, that he for any thing above alledged by the said *John Harris* in pleading ought not to be barred from having his said action against the said *John Harris*, because he says, that the plea aforesaid by him the said *John Harris* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar him the said *George* from having his said action against him the said *John Harris*, to which said plea in manner and form aforesaid above pleaded, the said *George* hath no need, nor is he bound by the law of the land in any manner to answer, and this he is ready to verify; wherefore for want of a sufficient answer in this behalf, he the said *George* prays judgment, and that his damages by reason of the breaking of the covenant aforesaid may be adjudged to him, &c.

R. Draper.

Rejoinder.

AND the said *John* saith, that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are sufficient in law to bar him the said *George* from having his said action against him the said *John* in manner aforesaid, which said plea and the matter therein contained, the said *John* is ready to verify and prove, as the court, &c. and because the said *George* hath not answered the said plea, nor hitherto in any other manner contradicted it, he the said *John* as before prays judgment.

judgment, and the said *George* be barred having his action against him for any other or further damage as aforesaid; but because the court, &c.

Musgrave versus Marler.

—To wit. *Thomas Musgrave*, gent. complains of *Edward Marler*, in the custody of the marshal, &c. of a plea of covenant, for this, THAT WHEREAS by certain articles of agreement indented, made at *Taunton*, in the county aforesaid, upon the second day of *March*, in the year of our Lord one thousand seven hundred and thirty three, between the said *Thomas*, by the name of *Thomas Musgrave*, of *Westmunkton*, in the county of *Somerset*, gent. of the one part, and the said *Edward*, by the name of *Edward Marler*, of *Taunton*, in the said county, locksmith, of the other part (and the counterpart of which said articles sealed with the seal of the said *Edward*, he the said *Thomas* brings here into court bearing date the same day and year) the said *Thomas*, for and in consideration of the sum of two hundred and sixty five pounds, fifteen shillings of lawful money of *Great Britain*, to be paid as therein and hereafter is mentioned, did grant, bargain and sell unto the said *Edward Marler* all and every and singular the timber trees, of what nature or kind soever, then standing, growing or being in and upon all these pieces and closes of meadow and pasture ground, containing by estimation twenty four acres or thereabouts, were the same more or less, situate, lying and being in the said parish of *Westmunkton*, and commonly called or known by the name of *Black Pitts*, and then in the possession of him the said *Thomas Musgrave*; and the said *Thomas Musgrave* did thereby covenant and agree to and with the said *Edward Marler*, his executors, administrators and assigns, that it should and might be lawful to and for the said *Edward Marler*, his workmen, agents and servants, at all times within the space of three years then next ensuing, peaceably and quietly to enter into and upon the

On agree-
ment for sale
of timber.

the said pieces and closes of meadow and pasture ground, with their appurtenances, and to fell, cut down, root, work up, and with any manner of carriages to take and carry away all and every the said timber trees at his and their wills and pleasure, provided the said *Edward Marler* did speedily make good the hedges after the first forty trees should be rooted; and the said *Thomas Musgrave* did thereby further covenant and agree, at his own cost and charges, to hawl or draw all the trees to be cut down by the said *Edward Marler*, to one or more sawpit or sawpits, to be made on the said premises for the conveniency of the said *Edward Marler*'s sawing the same therein; and the said *Edward Marler* did by the said articles covenant, promise and agree to and with the said *Thomas Musgrave*, that he the said *Edward Marler* should and would, at the end of one year and an half next from the date thereof, well and truly pay or cause to be paid unto the said *Thomas Musgrave* the said sum of two hundred and sixty five pounds, fifteen shillings of lawful money of *Great Britain*, being the full consideration money therein before mentioned and expressed for the absolute purchase of the said timber trees, as by the said articles of agreement more fully appears; and the said *Thomas Musgrave* in fact saith, that the said *Edward* at the end of one year and an half next from the date of the said articles, or at any time since, hath not paid nor caused to be paid unto the said *Thomas Musgrave*, the said sum of two hundred and sixty five pounds, fifteen shillings, which he ought to have done according to the form and effect of his said covenant; and thus the said *Thomas* saith, that the said *Edward* (although often requested) hath not kept his said covenant with the said *Thomas*, but hath broke the same, and hath hitherto refused, and still doth refuse to keep the same with him, whereby he says he is prejudiced, and hath damage to the value of three hundred pounds, and thereupon he brings his suit, &c.

DEBT.

D E B T.

MICHAELMAS TERM 8 Geo. II.

Cawse *versus* Hall.

—To wit. **A**NTHONY CAWSE complains of *Tho-* For rent.
mas Hall, in the custody of the marshal,
 &c. of a plea that he render to him twenty five pounds,
 seventeen shillings and six pence which he owes to
 him, and unjustly detains from him, for this, **T**HAT
 WHEREAS the said *Anthony* on the twenty fourth day
 of *June*, in the year of our Lord one thousand seven
 hundred and thirty four, at *Newport*, in the county
 aforesaid, demised to the said *Thomas* a messuage of
 the said *Anthony's*, there situate and being with the
 appurtenances, To have and to hold the same to the
 said *Thomas* from thenceforth as long as both of the
 said parties should please, yielding and paying there-
 fore yearly and every year, as long as the said *Thomas*
 should hold and enjoy the same by virtue of the said
 demise, the yearly rent of eleven pounds, ten shillings
 of lawful money of *Great Britain*, at the feast of the
 Birth of our Lord *Christ*, and the *Nativity of St. John*
the Baptist, in every year, by even and equal portions;
 by virtue of which demise the said *Thomas* entered into
 the said messuage with the appurtenances, and was
 possessed thereof from thenceforth until the feast of
 the *Nativity of St. John the Baptist*, in the year of
 our Lord one thousand seven hundred and thirty
 five, and eleven pounds, ten shillings of the rent
 Z aforesaid

DECLARATIONS, PLEADINGS, &c.

aforesaid due and payable to the said *Anthony* by the said *Thomas* for one year, ended on the feast of the *Nativity of St. John the Baptist*, in the said year one thousand seven hundred and thirty five, at the said feast were due in arrear and unpaid to the said *Anthony*, to demand and have of the said *Thomas Hall* the said eleven pounds, ten shillings, parcel of the said twenty five pounds, seventeen shillings and sixpence.

AND WHEREAS ALSO the said *Anthony* afterwards, to wit, on the said twenty fourth day of *June*, in the said year of our Lord one thousand seven hundred and thirty four, at *Newport* aforesaid, in the county aforesaid, demised to the said *Thomas* another messuage, of the said *Anthony's* there situate and being, with the appurtenances, To have and to hold the same to the said *Thomas* from thenceforth as long as both the said parties should please, yielding and paying therefore yearly and every year, as long as the said *Thomas* should hold and enjoy the same by virtue of the said demise last abovementioned, the yearly rent of eleven pounds, ten shillings of like lawful money, at the four most usual feasts or days of payment in the year, that is to say, the feast of *St. Michael the Archangel*, the Birth of our Lord *Christ*, the *Annunciation of the Virgin Mary*, and the *Nativity of St. John the Baptist*, in every year, by even and equal portions; by virtue of which said last mentioned demise the said *Thomas* entered into the said messuage, with the appurtenances last above mentioned, and was possessed thereof from thenceforth until the feast of *St. Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty five, and fourteen pounds, seven shillings and sixpence of the rent last aforesaid due and payable to the said *Anthony* by the said *Thomas*, for one year and one quarter of a year ended on the said feast day of *St. Michael*, in the year of our Lord one thousand seven hundred and thirty five, at the said feast were due in arrear and unpaid to the said *Anthony*, whereby an action accrued to the said *Anthony* to demand and have of *Thomas Hall* the said fourteen pounds,

seven

seven shillings and sixpence, residue of the said twenty five pounds, seventeen shillings and sixpence; yet the said *Thomas Hall* (although often requested) hath not yet paid to the said *Anthony* the said twenty five pounds, seventeen shillings and sixpence; but hath hitherto refused, and still doth refuse to pay the same to him, whereby he says he is prejudiced, and hath damage to the value of twenty pounds, and thereupon he brings his suit, &c.

HILARY TERM, 9 GEO. II.

Taunton versus Higgins.

—To wit. *Edward Taunton* complains of *Henry Higgins* and *Mary* his wife, late *Mary Barnes*, spinster, daughter and heir of *Samuel Barnes*, deceased, of a plea that they render to him forty pounds of lawful money of *Great Britain*, which they owe to him and unjustly detain from him, FOR THAT WHEREAS the said *Samuel* in his life time, on the twelfth day of *June*, in the year of our Lord one thousand seven hundred and twenty eight, at *Brewton*, in the county aforesaid, by his certain writing obligatory, sealed with his seal, and now shewn to the court of our said lord the King here, bearing date on the day and year aforesaid, acknowledged himself to be held, and firmly bound to the said *Edward Taunton* in the said forty pounds, to be paid to the said *Edward Taunton* when he should be thereunto required, and for the making the true payment thereof to the said *Edward Taunton* bound himself and his heirs by the said writing obligatory; yet the said *Samuel* in his life time, and the said *Henry Higgins* and *Mary*, since the death of the said *Samuel* (although often required) have not paid the said forty pounds, to the said *Edward Taunton* but have hitherto altogether refused, and the said *Henry Higgins* and *Mary* still do refuse to pay the same to him, to the damage of the said *Edward Taunton* ten pounds, and thereof, &c.

On bond
against hus-
band and
wife, the
wife being
heir at law.

Plea, nothing by descent.

AND the said *Henry Higgins* and *Mary*, by *W. G.* their attorney, come and defend the wrong and injury; when, &c. and say, that they cannot deny the said action of the said *Edward Taunton* now, but that the said writing is the deed of the said *Samuel Barnes*, deceased, father of the said *Mary*, nor but that they owe to the said *Edward Taunton* the said forty pounds in the manner in which the said *Edward Taunton* hath above declared against them; but the said *Henry Higgins* and *Mary* say, that the said *Mary* hath not any lands or tenements by hereditary descent from the said *Samuel Barnes*, her said late father, in fee simple, nor had at the time of exhibiting the said bill of the said *Edward Taunton*, nor ever afterwards, besides a certain part or share called the *Eastern moiety* of a messuage with the appurtenances, and also an undivided moiety of an orchard and outhouses to the said *Eastern moiety* belonging, and also an acre of pasture lying in a certain close called *Rooke's Bridge*, and also an acre of pasture lying by the side of a certain river called *Baltram River*, and also an undivided moiety of two acres of pasture lying in a certain field called *Stonewood*, with their appurtenances, all which premises are situate, lying and being in the parish of *Hornblotton*, in the said county of *Somerset*, and this they are ready to verify, wherefore they pray judgment if the said *Mary*, as daughter and heir of the said *Samuel Barnes*, ought to be charged with the said debt, by virtue of the said writing obligatory, except in the tenements aforesaid with the appurtenances.

R. Draper.

Judgment.

AND hereupon the said *Edward Taunton*, inasmuch as the said *Henry Higgins* and *Mary* his wife have above acknowledged the said action of the said *Edward Taunton* in form aforesaid, prays judgment, and that his said debt, together with his damages by reason of the detaining the same, to be levied of the tenements aforesaid with the appurtenances, may be adjudged to him; therefore it is considered by

by the said court here, that the said *Edward Taunton* recover against the said *Henry Higgins* and *Mary* his wife, his said debt and his damages, as well by reason of the detaining the said debt as for his costs and charges by him laid out about his suit in this behalf to sixty three shillings, adjudged by the court here to the said *Edward Taunton*, and with his assent to be levied of the said tenements with their appurtenances, and that the said *Henry Higgins* and *Mary* be amerced, &c. but because it is not known to the court here how much the said tenements with the appurtenances are worth by the year in all issues beyond reprises, the sheriff is commanded, that by the oath of honest and lawful men of his bailiwick, he diligently inquire how much the said tenements with the appurtenances are worth by the year in all issues beyond reprises; and having diligently taken the said inquisition, that he do without delay deliver to the said *Edward Taunton* the said tenements with the appurtenances, according to the true value thereof, to hold to the said *Edward Taunton* and his assigns, until he shall have levied the debt and damages aforesaid, and in what manner he shall have executed this our precept let him make known to us at *Westminster*, on *Wednesday* next after three weeks of the *Holy Trinity*, under his seal, and the seals of those by whose oath he shall have taken the said inquisition, &c.

R. Draper.

Cray versus Green.

———To wit. *Samuel Cray* complains of *William Green*, in the custody of the marshal, &c. of a plea that he render to him forty pounds of lawful money of *Great Britain* which he owes to him, and unjustly detains from him, FOR THAT WHEREAS the said *Samuel* before the feast of *St. Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty one, to wit, on the twenty eighth day of *September*,
For rent against tenant at will.

September, in the same year, at *Taunton*, in the county aforesaid, demised, and to farm let, to the said *William* one messuage and one garden, situate, lying and being at *West Lydford*, in the said county, To have and to hold the said demised premises with the appurtenances to the said *William* from the feast aforesaid, for and during the term of one whole year then next ensuing, and to be fully complete and ended, and from thence as long as it should please the said *Samuel* and *William*, yielding and paying therefore to the said *Samuel* yearly and every year wherein the said *William* should have and hold the said demised premises with the appurtenances, by virtue of the said demise, the yearly rent of two shillings of lawful money of *Great Britain*, upon the feast of *St. Michael the Archangel*, in every year; by virtue of the said demise the said *William* afterwards, to wit, on the thirtieth day of *September*, in the year aforesaid, entered into the said demised premises with the appurtenances, and was possessed thereof until and upon the feast day of *St. Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty two, and twenty shillings of the said yearly rent for one whole year ended on the feast of *St. Michael the Archangel*, in the said year of our Lord one thousand seven hundred and thirty three, were then due and in arrear to the said *Samuel*, and still are in arrear and unpaid, by reason of which an action accrued to the said *Samuel* to demand and have of the said *William* the said twenty shillings, part of the said forty shillings.*

AND ALSO WHEREAS the said *Samuel Cray*, upon the said feast of *St. Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty one, at *Taunton* aforesaid, in the county aforesaid, demised, and to farm let unto the said *William* one other messuage, and one other garden with the appurtenances, situate, lying and being

* An action on this last demise at will cannot be brought out of the county.

at *West Lydford*, in the county aforefaid, To have and to hold the faid demifed premifes with the appurtenances to the faid *William*, from the feaft laft before mentioned as long as the faid *Samuel* and *William* ſhould please, yielding and paying therefore yearly and every year wherein the faid *William* ſhould have and hold the faid demifed premifes laft mentioned with the appurtenances, by virtue of the faid laft demife, the yearly rent of twenty ſhillings of like lawful money upon the four moſt uſual feaſts or days of payment in the year, to wit, on the *Nativity of our Lord Chriſt*, the *Annunciation of the Bleſſed Virgin Mary*, *St. John the Baptiſt*, and the feaſt of *St. Michael the Archangel*, to be paid by even and equal portions; by virtue of which faid laſt demife, the faid *William* afterwards, on the faid thirtieth day of *September*, in the year of our Lord one thouſand ſeven hundred and thirty one, entered into the faid laſt demifed premifes with the appurtenances, and held and enjoyed the faid laſt demifed premifes with the appurtenances until and upon the feaſt of *St. Michael the Archangel*, in the year of our Lord one thouſand ſeven hundred and thirty three, and twenty ſhillings of the yearly rent laſt abovementioned, for one whole year ended at the feaſt of *St. Michael the Archangel*, in the ſame year of our Lord one thouſand ſeven hundred and thirty three, were then due and in arrear to the faid *Samuel* and ſtill is in arrear and unpaid, by reaſon of which an action accrued to the faid *Samuel*, to demand and have of the faid *William* the faid twenty ſhillings laſt mentioned, reſidue of the faid forty ſhillings; yet the faid *William* (although often required) hath not as yet rendered to the faid *Samuel* the faid forty ſhillings, but hath hitherto altogether reſuſed, and ſtill doth reſuſe to pay him for the ſame, to the damage of the faid *Samuel* ten pounds, and thereupon he brings his ſuit, &c.

Knot versus Long.

On bond of
arbitration.

—To wit. *Thomas Knot* complains of *Christopher Long*, otherwise called *Christopher Long* of *Skidmore*, in the parish of *Ramsay* without, in the county of *Southampton*, yeoman, being in the custody of the marshal of our Lord the King, before the King himself, of a plea that he render to him three hundred pounds of lawful money of *Great Britain* which he owes to and unjustly detains from him, FOR THAT WHEREAS the said *Christopher*, on the fourth day of *December*, in the year of our Lord one thousand seven hundred and thirty three, at *Andover*, in the said county, by his certain writing obligatory, sealed with the seal of the said *Christopher*, and now here shewn to the court of our lord the King, the date whereof is the day and year aforesaid, acknowledged himself to be held, and firmly bound to the said *Thomas* in the said three hundred pounds, to be paid to the said *Thomas* when he should be afterwards thereunto required; nevertheless the said *Christopher* (although often requested to pay the same) hath not paid the said *Thomas* the said three hundred pounds or any part thereof, but hath hitherto altogether refused, and does now refuse so to do, to the damage of the said *Thomas* twenty pounds, and therefore he brings his suit, &c. *Pledges, &c.*

Plea.

AND the said *Christopher*, by *R. P.* his attorney, comes and defends the force and injury, when, &c. and prays the hearing of the said writing, and it is read to him, &c. he prays also the hearing of the condition of the said writing, and it is read to him in these words, "The condition of this obligation is such, that if the above bounden *Christopher Long*, his heirs, executors and administrators, do and shall, for his and their parts and behalfs, well and truly in all things stand to, obey, abide, fulfil, perform and keep the award, order, arbitration, end and final determination of *John Duke*, of *Sorsen*, in the parish of *Markson*, in the county aforesaid, Esq; &c. or any two of them, arbitrators indifferently elected and

and named, as well on the part and behalf of the above bounden *C. L.* as of the abovenamed *Thomas Knot*, to arbitrate, award, judge, order and determine, of and concerning all and all manner of action and actions, cause and causes of action, suits, quarrels, controversies, trespasses, damages and demands whatsoever, at any time heretofore had, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending, by and between the said parties or either of them, so as the said award be made by the said arbitrators or any two of them, and ready to be delivered to the parties in difference, or such of them as shall desire the same on or before the twenty first day of this instant *December*, then this obligation to be void, otherwise in force; and it was also agreed by and between the said *Christopher Long* and the said *Thomas Knot*, that this submission to the said award so to be made as aforesaid, shall be made a rule of his Majesty's high court of Chancery at *Westminster*, pursuant to the late act of parliament for that purpose, which being read and heard, the said *Christopher* saith, that the said *Thomas* ought not to have or maintain his said action against him, because he saith that the said arbitrators in the said condition abovementioned, or any two of them did not make any award of and concerning the premises in the said condition specified on or before the twenty first day of *December*, in the said condition mentioned, according to the form of the said condition, and this he is ready to verify, wherefore he prays judgment if the said *Thomas* ought to have or maintain his said action against him.

R. Draper.

AND the said *Thomas* saith, that he by any thing *Replication.*
by the said *Christopher* above alledged in his plea ought not to be barred from having his said action therefore against him, because he saith that the said *John Duke* and *John Crap*, two of the arbitrators in the said condition abovenamed, after making the said writing obligatory, to wit, on the said twenty first day of *December*, in the year of our Lord one thousand

thousand seven hundred and thirty three, in the said condition mentioned, having taken upon themselves the charge and burthen of arbitrating, awarding, ordering, judging and determining of and concerning the premises at *Andover* aforesaid, in the said county, did make their award *in writing of and concerning the premises* in the said condition mentioned, and then and there ready to be delivered to the said parties, and by the said award did award, order, judge and determine thereupon, that the said *Christopher* should pay or cause to be paid unto the said *Thomas* the sum of ten pounds, for the said *Christopher's* sowing with corn eighty acres of arable land of *Rookley* farm, in his last year, mentioned in the pleadings of a certain cause then depending in his Majesty's high court of Chancery, wherein *Thomas Hobb Weeks*, Esq; an infant, by his *prochain ami*, was complainant, *Mary Weeks*, widow, lately deceased, and others were defendants, and wherein the said *Thomas Knot* was petitioner, for the breach of several covenants, and that the said *Christopher* should pay or cause to be paid unto the said *Thomas Knot* the further sum of twelve pounds for the said *Christopher's* not repairing the dwelling house, and thatching the barns and buildings belonging to *Rookley*; and for his the said *Christopher Long's* not folding above ten acres of the said farm when he ought to have folded at least thirty acres, the further sum of six pounds, ten shillings; and for the said *Christopher* permitting his hogs to go unringed in the pasture grounds, fields and downs belonging to the said farm, the further sum of five shillings; and for the said *Christopher's* cutting and carrying away, and selling several quantities of rice wood off from the said farm, and leaving several lug of dead fence down, and thereby not leaving sufficient wood on the premises to make the same up again, and by not pleashing and repairing several lugs of quick hedge on the premises, the further sum of eighty pounds; and for the said *Christopher's* carrying off several loads of straw and dung from the premises, and refusing to let the said *Thomas* have any straw or litter for his horses, the further sum

sum of ten pounds ; all which said several sums amount in the whole to the sum of forty six pounds, fifteen shillings ; and that the same should be paid by the said *Christopher* to the said *Thomas*, at the house of *Harry Harwood*, being the *Dolphin* inn, in the town of *Southampton*, in the county of the same town, on the first day of *February* then next, between the hours of twelve and one of the clock of the same day ; and that the said *Christopher* should at the same time and place pay or cause to be paid unto the said *Thomas* such sum or sums of money as *James Willis* and *John Godfrey* the younger, gent. should settle and agree to be due, and which ought to be paid by the said *Christopher* to the said *Thomas* for costs in the said cause, suit or action, to the time or date of the said writing obligatory; having regard to such costs only as are usually paid by defendants to complainants when the same are taxed by any one of his Majesty's honourable masters of the high court of Chancery ; and lastly, that the said *Christopher* should at the time and place abovementioned, on his the said *Thomas's* making and executing unto the said *Christopher* at his own cost, make and execute a general release of all matters and things depending between them from the beginning of the world unto the day of the date of the said writing obligatory, as by the said award in writing among other things more fully appears, and of which afterwards, to wit, on the said twenty first day of *December*, in the said year of our Lord one thousand seven hundred and thirty three, at *Andover* aforesaid, the said *Christopher* had notice ; and the said *Thomas Knot* further saith, that after the making of the said award, and before the said first day of *February* in the said award mentioned, to wit, on the thirty first day of *January*, in the said year of our Lord one thousand seven hundred and thirty three, at *Andover* aforesaid, in the said county, they the said *James Willis* and *John Godfrey* did settle and agree the sum of fifty seven pounds, nine shillings and nine pence to be due, and which ought to be paid by the said *Christopher* to the said *Thomas Knot* for his cost in the said cause, suit or action, to the

the time of the date of the said writing obligatory, in settling which the said *James Willis* and *John Godfrey* had regard to such costs only as are usually paid by defendants to complainants when taxed by masters of the high court of Chancery, of which said settlement and agreement of the said sum of fifty seven pounds, nine shillings and nine pence, by the said *James Willis* and *John Godfrey*, so to be paid by the said *Christopher* to the said *Thomas*, the said *Christopher* afterwards, to wit, the said thirty first day of *January*, in the year of our Lord one thousand seven hundred and thirty three, at *Andover* aforesaid, had notice ; and the said *Thomas*, protesting that though he the said *Thomas* from the time of making the said award hitherto has well and truly observed, performed, fulfilled and kept, all and singular the things in the said award contained on the part of him the said *Thomas* to be observed, performed, fulfilled and kept, according to the form and effect of the said award, protesting also that the said *Christopher* has not observed, performed, fulfilled and kept any thing in the said award contained on the part of the said *Christopher* to be observed, performed, fulfilled and kept, according to the form and effect of the said award, for plea, the said *Thomas* says, that the said *Christopher* did not pay the said sum of fifty seven pounds, nine shillings and nine pence, so settled and agreed by the said *James Willis* and *John Godfrey* according to the form and effect of the said award, but the same remains yet unpaid, and this he is ready to verify, and for that reason he prays judgment and his debt aforesaid, together with his damages occasioned by the detaining of his said debt to be adjudged by him, (and so forth).

Thomas Hussy.

Demurrer.

AND the said *Christopher* says, that the plea aforesaid by the said *Thomas* in manner and form aforesaid above pleaded, in reply to the matter therein contained,

contained, are not sufficient in law for the said *Thomas* to maintain his said action against him, to which said replication in manner and form aforesaid above pleaded, the said *Christopher* hath no need, nor is he obliged by the law of the land to answer, and this he is ready to verify, wherefore for want of a sufficient replication in this behalf the said *Christopher* prays judgment, and that the said *Thomas* may be barred from having his said action against him.

R. Draper.

AND the said *Thomas* saith, that the plea aforesaid of him the said *Thomas* in manner and form aforesaid above pleaded in reply, and the matter therein contained, are good and sufficient in law for the said *Thomas* to maintain his said action against the said *Christopher*, which said plea and the matter therein contained the said *Thomas* is ready to verify and prove, as the court shall award; and for that the said *Christopher* to the plea aforesaid of the said *Thomas* does not answer, nor the same in any manner does deny, the said *Thomas* as before prays judgment and his debt aforesaid, together with his damages occasioned by the detaining of the said debt to be adjudged to him, &c. but because the court of our lord the King now here is not yet advised about giving judgment of and upon the premises, day is therefore given to the parties aforesaid to come before the lord our King, at *Westminster*, until next after to hear judgment of and upon the same premises, for that the court of our said lord the King now here is not yet advised hereof.

Joinder in
demurrer.

TRINITY TERM, 10 GEO. II.

Perry versus Stigant.

—To wit. Be it remembered that heretofore, that is to say, in the term of *St. Hilary* last past, before our sovereign lord the King, at *Westminster*, came *John Perry*, executor of the last will and testament

On bond by
executor of
executrix.

tament of *Elizabeth White*, widow, who was the executrix of the last will and testament of *James White*, her late husband, deceased, by *Samuel Scott* his attorney, and brought into the court of our lord the King then there, his bill against *William Stigant*, in custody of the marshal, &c. in a plea of debt, and there are pledges to prosecute, to wit, *John Davis* and *Richard Brunton*, which said bill follows in these words, to wit, *Hampshire*, to wit, *John Perry*, executor, &c. (as before) complains of *William Stigant*, in custody of the marshal, &c. of a plea that he render to him one hundred and ninety six pounds of lawful money of *Great Britain*, which he unjustly detains from him. FOR THAT WHEREAS the said *William*, on the third day of *August*, in the year of our Lord one thousand seven hundred and twenty one, in the life time of the said *James*, at *Fordingbridge*, in the county aforesaid, by his certain writing obligatory, sealed with his seal, and now shewn to the court of our said lord the King here, bearing date on the day and year aforesaid, acknowledged himself to be held and firmly bound to the said *James* in sixty six pounds, part of the said one hundred and ninety six pounds, to be paid to the said *James* or his executors when he should be thereunto required.

AND ALSO WHEREAS the said *William* afterwards, to wit, on the fourth day of *June*, in the year of our Lord one thousand seven hundred and twenty two, in the life time of the said *James*, at *Fordingbridge* aforesaid, in the county aforesaid, by his certain other writing obligatory, sealed with the seal of the said *William*, and now shewn to the court of our said lord the King here, bearing date on the day and year last mentioned, acknowledged himself to be held and firmly bound to the said *James* in one hundred and thirty pounds, residue of the said one hundred and ninety six pounds, to be paid to the said *James*, or his executors, when he should be thereunto required; yet the said *William* (although often required) hath not paid the said one hundred and ninety six pounds to the said *James* in his life time, or to the said *Elizabeth* in her life time, after the death of the said *James*, or to the said *John* since the death

of the said *Elizabeth*, but hath hitherto altogether refused to pay the same to them, or either of them, and still doth refuse to pay the same to the said *John*, to the damage of the said *John* twenty pounds, and thereof he brings his suit; and the said *John* brings here into the court of our lord the King the letters testamentary of the said *James*, by which it appears to the court here that she the said *Elizabeth* was executrix of the said will of the said *James*, and that she had administration thereof, &c. and also the letters testamentary of the said *Elizabeth*, by which it appears to the court here that he the said *John* is executor of the last will and testament of the said *Elizabeth*, and that he hath administration thereof, &c.

AND the said *William*, by *Robert Elliot* his attorney, Plea. comes and defends the wrong and injury, when, &c. and prays Oyer of the said writing obligatory in the said declaration first abovementioned, and it is read to him, &c. he likewise prays Oyer of the condition of that writing obligatory, and it is read to him in these words, to wit. The condition of this obligation is such, that if the abovementioned *William Stigant*, his heirs, executors or administrators, do well and truly pay, or cause to be paid, unto the above named *James White*, his executors, administrators or assigns, the full sum of thirty three pounds, with legal interest for the same of lawful money of *Great Britain*, on the fourth day of *August*, which shall be in the year of our Lord one thousand seven hundred and twenty two, then this obligation to be void, or else to remain in full force; which being read and heard, the said *William* says that the said *John* ought not to have or maintain his said action against him as to the said sixty six pounds, part of the said one hundred and ninety six pounds, because he says that he the said *William*, after the said fourth day of *August*, in the said condition of the said first mentioned writing obligatory specified, paid to the said *James* in his life time, and to the said *Elizabeth* after his death, all the said principal money mentioned in the said condition of the said first writing obligatory, and the interest thereof, to wit, at *Fordingbridge* aforesaid, and this

this he is ready to verify ; wherefore he prays judgment if the said *John* ought therefore to have or maintain his said action against him: and the said *William* prays *Oyer* of the said writing obligatory in the said declaration lastly abovementioned, and it is read to him, &c. and he also prays *Oyer* of the condition of that writing obligatory, and it is read to him in these words, to wit, The condition of this obligation is such, that if the abovementioned *William Stigant*, his heirs, executors, administrators or assigns, shall and do well and truly pay, or cause to be paid unto the above named *James White*, his executors, administrators or assigns, the full sum of sixty four pounds of good and lawful money of *Great Britain*, on demand, without fraud or further delay, then this obligation to be void and of none effect, or else to be and remain in full force and virtue ; which being read and heard, the said *William* says that the said *John* ought not to have or maintain his said action against him as to the said one hundred and thirty pounds, residue of the said one hundred and ninety six pounds, because he says that he the said *William* after the demand of the said *John* made, did pay to the said *James* in his life time, and to the said *Elizabeth* after his death, all the said principal money mentioned in the said condition of the said last mentioned writing obligatory, and all the interest thereof, to wit, at *Fordingbridge* aforesaid, and this he is ready to verify ; wherefore he prays judgment if the said *John* ought therefore to have or maintain his said action against him, &c.

Replication. AND the said *John*, as to the said plea of him the said *William* as to the said sixty six pounds, part of the said one hundred and ninety six pounds above demanded, to the plea of him the said *William* first abovementioned above pleaded in bar, says, that he by any thing above alledged by the said *William* in his said plea, ought not to be barred from having his said action thereof against him, because he says that the said *William* did not pay the said principal money mentioned in the said condition of the said writing obligatory first abovementioned, and the interest thereof in manner and form as the said *William* hath above in his pleading alledged, and this he prays
- may

may be enquired of by the country, and the said *William* likewise; and the said *John*, as to the said plea of him the said *William* as to the said one hundred and thirty pounds, residue of the said one hundred and ninety six pounds, above demanded, in the said plea of him the said *William* last abovementioned above pleaded in bar, says that he by any thing above alledged by the said *William* in pleading ought not to be barred from having his said action thereof against him, because he says that the said *William* did not pay the said principal money mentioned in the said condition of the said last mentioned writing obligatory, and the interest thereof in manner and form as the said *William* hath above in his pleading alledged, and this also he prays may be enquired of by the country, and the said *William* likewise, therefore, &c.

MICHAELMAS TERM, 10 GEO. II.

Bilson versus Heberden.

—To wit. *Susannah Bilson*, widow, complains For rent. against *John Heberden*, in the custody of the marshal, &c. in a plea that he render to her fifty six pounds of lawful money of *Great Britain*, which he owes to her, and unjustly detains from her, for this, THAT WHEREAS by a certain indenture made at *Basingstoke*, in the county aforesaid, upon the tenth day of *November*, in the year of our Lord one thousand seven hundred and twenty six, between the said *Susanna*, by the name of *Dame Susanna Bilson*, of *Mapledurham*, in the parish of *Buriton*, in the county of *Southampton*, widow, of the one part, and the said *John Heberden*, by the name of *John Heberden of Petersfield*, in the said county of *Southampton*, grazier, of the other part (the counterpart of which said indenture sealed with the seal of the said *John* the said *Susanna* brings here into court, bearing date the same day and year) she the said *Susanna Bilson*, for and in consideration of the yearly rent thereby reserved, and of the covenants and agreements thereafter in the said indenture

Words of indenture.

A a

denture

A quarter's rent only due, but the lease runs in half yearly payments.

indenture mentioned and expressed on the part and behalf of the said John Heberden, his executors, administrators and assigns, to be paid, performed and kept, did demise, grant and to farm let unto the said John Heberden all those several closes or inclosed grounds of meadow and pasture land, commonly called or known by the name of the Causeway Land, and then late in the tenure or occupation of the said John Heberden, his lessee or assignee, together with all commons, common of pasture, ways, watercourses, foot paths, easements, profits, commodities, and appurtenances whatsoever, to the said closes of land and premises belonging, or in any wise appertaining (except and always reserved out of the said demise and grant unto the said Susanna Bilson, her heirs and assigns, all timber and timber trees, and trees likely to be timber, with full and free liberty to and for the said Susanna Bilson, her heirs and assignees, to fell, cut down, convert and carry away the same at her and their free wills and pleasure, doing no wilful spoil or damage) To have and to hold all and singular the said closes or inclosed grounds of land and premises (except before excepted) with their and every of their appurtenances, unto the said John Heberden, his executors, administrators and assigns, from the feast day of St. Michael the Archangel next ensuing the date thereof, for, by and during and unto the full end and term of seven years from thenceforth next and immediately ensuing, and fully to be complete and ended, yielding and paying therefore yearly and every year, during the said term unto the said Susanna Bilson, her heirs or assignees, the yearly rent or sum of twenty eight pounds of lawful British money, at two of the most useful days or times of payment in the year, that is to say, the Annunciation of the Blessed Virgin Mary, and St. Michael the Archangel, by even and equal portions; by virtue whereof the said John Heberden entered into the said demised premises, with the appurtenances, and was possessed thereof, and the said John Heberden being so possessed thereof, fifty six pounds of the rent aforesaid, due and payable by the said John Heberden to the said Susanna, for two years ended upon the feast of St. Michael the Archangel, in the year of our Lord one thousand seven hundred and thirty four

four, at the said feast, were and still are in arrear and unpaid to the said *Susanna*, whereby an action accrued to the said *Susanna* to demand and have of the said *John Heberden* the said fifty six pounds; yet the said *John Heberden* (although often requested) hath not yet paid the said *Susanna* the said fifty six pounds, but hath hitherto altogether refused, and still doth refuse to pay the same to her, whereby she says she is prejudiced, and hath damage to the value of seventy pounds, and thereupon, &c.

Harding versus Ray, and others.

—To wit. *Thomas Harding* complains of *James Ray* the elder, and *Susanna* his wife, and *Joseph Ray* the younger, and *Christian* his wife, and *John Upton* and *Mary*, his wife, which said *Susanna*, *Christian* and *Mary* are sisters, and coheirs of *John Scraggleford*, their late brother, deceased, being in the custody, &c. of a plea that they render to him eighty pounds of lawful money of *Great Britain*, which they owe to him and unjustly detain from him. FOR THAT WHEREAS the said *John Scraggleford* in his life time, to wit, on the fifteenth day of *April*, one thousand seven hundred and twenty, at *Milbrook*, in the county aforesaid, by his writing obligatory, sealed with the seal of the said *John Scraggleford*, and now shewn to the court of our said lord the King, bearing date on the day and year aforesaid, acknowledged himself to be held and firmly bound to the said *Thomas* in the sum of eighty pounds, to be paid to the said *Thomas* when he should be thereunto required, and for the making true payment thereof to the said *Thomas* bound himself and his heirs by the said writing obligatory; yet the said *John Scraggleford*, in his life time, and the said *James* and *Susanna*, *Joseph* and *Christian*, *John Upton* and *Mary*, after the death of the said *John Scraggleford*, although often required, have not yet, nor hath any of them paid the said eighty pounds to the said *Thomas*, but have hitherto altogether refused and the said *James* and *Susannah*, *Joseph* and *Christian*, *John Upton* and *Mary*, still do refuse to pay the same to him,

On bond
against co-
heirs of the
obligor.

him, to the damage of the said *Thomas* five pounds, and thereof he brings his suit, &c.

Plea.

AND the said *James Ray* the elder, and *Susanna*, *Joseph Ray* the younger, and *Christian*, come by *A. B.* their attorney, and the said *John Upton* and *Mary*, although at the same day they are solemnly demanded, come not, nor say any thing in bar or denial of the said action of the said *Thomas Harding*, whereby the said *Thomas Harding* remains against them the said *John Upton* and *Mary*, thereof undefended; and because it is convenient that one judgment in the plea aforesaid be given against them the said *James Ray* the elder, and *Susanna*, *Joseph Ray*, the younger, and *Christian*, and *John Upton* and *Mary*, if it happen that judgment be given for the said *Thomas Harding* in the said plea against *James Ray* the elder, and *Susanna*, *Joseph Ray* the younger, and *Christian*, therefore let the giving judgment thereof against the said *John Upton* and *Mary* be staid until the pleas between the said *Thomas Harding* and the said *James Ray* the elder, and *Susanna*, and the said *Joseph Ray* the younger, and *Christian* be determined; and the said *James Ray* the elder, and *Susanna*, and the said *Joseph Ray* the younger, and *Christian*, defend the force and injury, when, &c. and the said *James Ray* the elder, and *Susanna* say, that the said *James Ray* the elder, and *Susanna*, in right of the said *Susanna*, as one of the sisters and coheirs of the said *John Scraggleford*, her late brother, deceased, ought not to be charged with the said debt by virtue of the said writing, because they say that the said *James Ray* the elder, and *Susanna*, in right of the said *Susanna*, have not any lands or tenements by hereditary descent from the said *John Scraggleford*, late brother of the said *Susanna*, in fee simple, nor had they at the time of exhibiting the said bill of the said *Thomas Harding*, nor ever after, and this they are ready to verify, wherefore they pray judgment if they ought to be charged with the said debt by virtue of the said writing; and the said *Joseph Ray* the younger, and *Christian* say, that the said *Joseph Ray* the younger, and

and *Christian*, in right of the said *Christian*, as one, &c. (*the same as before, to the end of the plea.*)

AND the said *Thomas Harding*, as to the said plea Replication. of the said *James Ray* the elder, and *Susanna* above pleaded in bar, saith that he ought not by any thing in the said plea alledged to be barred from having his said action against them, because he saith that after the death of the said *John Scraggleford*, and before the exhibiting of the said bill of the said *Thomas Harding*, to wit, on the first day of *May*, in the year of our Lord one thousand seven hundred and thirty two, the said *James Ray* the elder, and *Susanna*, in right of the said *Susanna*, as one of the sisters and coheirs of the said *John Scraggleford*, her late brother, deceased, had divers lands and tenements by hereditary descent from the said *John Scraggleford*, in fee simple, to wit, at *Milbrook* aforesaid, and this he is ready to verify; and the said *Thomas Harding*, as to the said plea of the said *Joseph Ray* the younger, and *Christian*, above also pleaded in bar, saith—(*the very same*); wherefore he prays judgment, and that his said debt, together with his damages by reason of the detaining of the said debt, may be adjudged.

And the said *James Ray* the elder, and *Susanna* his Rejoinder. wife, as to the said plea of the said *Thomas Harding* above pleaded in reply to their plea in bar, say that they the said *James Ray* the elder, and *Susanna*, in right of the said *Susanna*, as one of the sisters and coheirs of the said *John Scraggleford*, her late brother deceased, had not at any time before the exhibiting of the said bill any lands or tenements by hereditary descent from the said *John Scraggleford*, in fee simple, in manner and form as the said *Thomas* hath above by his replication alledged, and of this the said *James Ray* the elder, and *Susanna* his wife, do put themselves upon the country, and the said *Thomas Harding* likewise; and the said *Joseph Ray* the younger, and *Christian* his wife, as to the said plea of the said *Thomas Harding* above pleaded in reply to their plea in bar, say—(*just the same again*); therefore,

Therefore, as well to try this issue as the said other issue between the said *James Ray* the elder, and *Susanna* his wife, and *Thomas Harding*, above joined, let a jury come, &c.

Pinhorne versus Forster.

By church-
wardens,
for a bastard
child.

—To wit. *Abraham Pinhorne*, *Peter Silley*, *Henry Mist*, *Ralph Demency*, and *Richard Perry*, complain of *Ann Forster*, widow, executrix of the last will and testament of *Hugh Forster*, her late husband, deceased, in the custody of the marshal, &c. of a plea that she render to them one hundred pounds of lawful money of *Great Britain*, which she unjustly detains from them, for this, THAT WHEREAS at the time of sealing and executing the writing obligatory hereinafter mentioned, to wit, upon the twentieth day of *January*, in the year of our Lord one thousand seven hundred and twenty three, the said *Abraham Pinhorne* and *Peter Silley* were churchwardens of *Fordingbridge*, in the county of *Southampton*, and the said *Henry Mist*, *Ralph Demency*, and *Richard Perry*, and also one *Daniel Blackford*, since deceased, at the same time were overseers of the poor of the parish of *Fordingbridge* aforesaid, to wit, at *Downton*, in the said county of *Southampton*; and the said *A.* and *Peter* so being churchwardens, and the said *Henry*, *Ralph*, *Richard* and *Daniel*, so being overseers of the poor as aforesaid, the said *Hugh* in his life time, to wit, the said twentieth day of *January*, in the year aforesaid, at *Downton* aforesaid, by his writing obligatory, sealed with his seal, and now shewn to the court of our said lord the King here, bearing date on the day and year aforesaid, acknowledged himself to be held and firmly bound to them the said churchwardens and overseers, by the names of the churchwardens of *Fordingbridge*, in the county of *Southampton*, and overseers of the poor of the same parish of *Fordingbridge* aforesaid (whereof the said *Daniel*, one of the said overseers, is since deceased) in the said sum of one hundred pounds, to be paid to the said churchwardens and overseers, whereof, &c. when he should

be

be thereunto required; yet the said *Hugh* in his life time, and the said *Ann* since his decease (although often required) have not, nor have either of them paid the said one hundred pounds to the said *Abraham*, *Peter*, *Henry*, *Ralph*, *Richard* and *Daniel*, or to any or either of them, but have hitherto altogether refused, and the said *Ann* doth still refuse to pay the same to them, or to any or either of them, and the same is still unpaid, to the damage of the said *Abraham*, *Peter*, *Henry*, *Ralph* and *Richard*, five pounds, and thereof they bring their suit, &c.

HILARY TERM, 10 GEO. II.

Chalke versus Cramborne.

—To wit. *Richard Chalke* complains of *George* For rent. *Cramborne*, in the custody of the marshal, &c. in a plea that he render to him five pounds five shillings, which he owes to him and unjustly detains from him, for this, THAT WHEREAS the said *Richard*, upon the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty two, at *Milford* in the county aforesaid, demised to the said *George* a messuage and garden, with the appurtenances there situate, lying and being, To have and to hold the same to the said *George* from thenceforth for and during, and unto the full end and term of three years from thence next ensuing, and fully to be compleat and ended, and from thence as long as both the said parties should please, yielding and paying therefore yearly and every year, so long as the said *George* should have and hold the said tenements, with the appurtenances, by virtue of the said demise, the yearly rent or sum of thirty five shillings, upon the twenty ninth day of *September* in every year; by virtue of which said demise the said *George* entered into the said demised premises, with the appurtenances, and was possessed thereof from thenceforth until and upon the feast of *St. Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty six, and thirty five shillings of the rent aforesaid, due and payable by the

the said *George* to the said *Richard*, for one year, ended upon the said feast of *St. Michael the Archangel*, in the said year of our Lord one thousand seven hundred and thirty six, at the said feast, were in arrear and unpaid to the said *Richard*, whereby an action accrued to the said *Richard*, to demand and have of the said *George Cramborne* the said thirty five shillings, parcel of the said five pounds five shillings.

AND WHEREAS ALSO the said *Richard* afterwards, to wit, upon the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty five, at *Milford* aforesaid, demised to the said *George Cramborne* another messuage and garden, there situate, lying and being, with the appurtenances, To have and to hold the same to the said *George* from thenceforth, for, during, and unto the full end and term of one whole year then next ensuing, and fully to be compleat and ended, yielding and paying therefore unto the said *Richard* the rent or sum of thirty five shillings, at the end of the same year; by virtue of which said demise last abovementioned, the said *George* entered into the said demised premises last abovementioned, with the appurtenances, and was possessed thereof from thenceforth until and upon the feast of *St. Michael the Archangel*, in the said year of our Lord one thousand seven hundred and thirty six, and thirty five shillings of the rent last aforesaid due and payable by the said *George* to the said *Richard*, for one year, ended upon the said feast of *St. Michael the Archangel*, in the said year of our Lord one thousand seven hundred and thirty six, at the said feast, were in arrear and unpaid to the said *Richard*, whereby an action accrued to the said *Richard* to demand and have of the said *George* the said thirty five shillings last mentioned, other parcel of the said five pounds five shillings.

AND WHEREAS ALSO the said *Richard* afterwards, to wit, upon the twenty ninth day of *September*, in the said year of our Lord one thousand seven hundred and thirty five, at *Milford* aforesaid, in the county aforesaid, demised unto the said *George* another messuage and garden, with the appurtenances, there

there situate, lying and being, To have and to hold the same to the said *George* from thenceforth as long as both the said parties should please, yielding and paying therefore yearly and every year, so long as the said *George* should have and hold the said demised premises last abovementioned, with the appurtenances, by virtue of the said demise, the yearly rent of thirty five shillings at the end of every year; by virtue of which said last mentioned demise the said *George* entered into the said demised premises last abovementioned, with the appurtenances, and was possessed thereof from thenceforth until and upon the feast of *St. Michael the Archangel*, in the said year of our Lord one thousand seven hundred and thirty six, and thirty five shillings of the rent last aforesaid, due and payable by the said *George* to the said *Richard* for one year, ended upon the said feast of *St. Michael the Archangel*, in the said year of our Lord one thousand seven hundred and thirty six, at the said feast, were in arrear and unpaid to the said *Richard*, whereby an action accrued to the said *Richard* to demand and have of the said *George* the said thirty five shillings last abovementioned, residue of the said five pounds five shillings; yet the said *George* (although often requested) hath not yet paid to the said *Richard* the said five pounds five shillings, but hath hitherto refused, and still doth refuse to pay the same to him, whereby he says he is prejudiced, and hath damage to the value of five pounds, and thereupon he brings his suit, &c,

Sealy versus Sealy, administratrix.

——To wit. *Richard Sealy* complains of *Gertrude Sealy*, widow, administratrix of all and singular the goods and chattels, rights and credits, which belonged to *Richard Sealy* the younger, deceased, in custody of the marshal, &c. of a plea that she render to him four hundred pounds of lawful money of *Great Britain*, which she unjustly detains from him. FOR THAT WHEREAS the said *Richard Sealy* the younger,

Against an
administratrix on a
bond given
by the testa-
tor for sixk.

in

DECLARATIONS, PLEADINGS, &c.

in his life time, on the twenty second day of *March*, in the year of our Lord one thousand seven hundred and twenty five, at *Brewton*, in the county aforesaid, by his certain writing obligatory, sealed with his seal, and now shewn to the court of our said lord the King here, bearing date on the day and year aforesaid, acknowledged himself to be held and firmly bound to the said *Richard Sealy*, the now plaintiff, in two hundred pounds, part of the said four hundred pounds, to be paid to the said *Richard* the now plaintiff, when he should be thereunto required.

AND ALSO WHEREAS the said *Richard Sealy* the younger, in his life time, afterwards, to wit, on the second day of *April*, in the year of our Lord one thousand seven hundred and thirty six, at *Brewton* aforesaid, in the county aforesaid, by his other writing obligatory, sealed with his seal, and now likewise shewn to the court of our said lord the King here, bearing date on the day and year last abovementioned, acknowledged himself to be held and firmly bound in two hundred pounds, residue of the said four hundred pounds, to be paid to the said *Richard*, the now plaintiff, when he should be afterwards thereunto required; yet the said *Richard Sealy*, the younger, in his life time, or the said *Gertrude* since the death of the said *Richard Sealy* the younger, have not paid the said four hundred pounds to the said *Richard Sealy* the now plaintiff, but have hitherto altogether refused, and the said *Gertrude* still doth refuse to pay the same to him, to the damage of the said *Richard Sealy*, the now plaintiff, ten pounds, and thereof he brings his suit, &c.

Plea, that several judgments against defendant's testator were in force, and *plene administravit* as to the demand of the plaintiff.

AND the said *Gertrude*, by *George Wilkinfon* her attorney, comes and defends the force and injury, when, &c. and says, that the said *Richard* the now plaintiff ought not to have or maintain his said action therefore against her, because she saith that the said *Richard Sealy* the younger, in his life time, to wit, on the seventeenth day of *June*, in the year of our Lord one thousand seven hundred and thirty nine, at *Brewton*, in the county aforesaid, by his certain writing obligatory, sealed

ed with his seal, acknowledged himself to be bound to one *Margaret Chant*, widow, in forty pounds, to be paid to the said *Margaret* when he should be thereunto required, and to which payment well and faithfully to be made he the said *Richard Sealy*, the younger, bound himself and his administrators firmly by the said writing obligatory, and that the said *Richard Sealy* the younger, in his life time, to wit, on the seventh of *May*, in the year of our Lord one thousand seven hundred and thirty one, at *Brewton* aforesaid, by his certain other writing obligatory, sealed with his seal, acknowledged himself to be bound to the said *Margaret Chant* in sixty pounds, to be paid to the said *Margaret* when he should be thereunto required, to which payment well and faithfully to be made he the said *Richard Sealy* the younger, bound himself and his administrators firmly by the said last mentioned writing obligatory, which said two several writings obligatory were made by the said *Richard Sealy*, the younger, in his life time, to the said *Margaret*, for true and just debts, respectively, really due and owing from the said *Richard Sealy*, the younger, to the said *Margaret*, and the said writing obligatory at the time of the death of the said *Richard Sealy* the younger, now and still are in full force, wholly unpaid, unsatisfied, and not cancelled, whereupon the said *Margaret* for the recovery of her said debts of forty and sixty pounds, in the whole amounting to the sum of one hundred pounds, after the death of the said *Richard Sealy* the younger, to wit, on the octave of *St Hilary*, in this same *Hilary* term, in the ninth year of the reign of our sovereign lord the now King, in the court of our said lord the King, before *Alexander Denton*, Esq; Sir *John Fortescue Aland*, knight, and *Thomas Reeve*, Esq; then his said Majesty's justices of the bench, at *Westminster*, impleaded the said *Gertrude* as administratrix of all and singular the goods and chattels, rights and credits, which were of the said *Richard Sealy* the younger, her late husband, deceased, by the name of *Gertrude Sealy*, late of *West Cornwall*, in the county of *Somerset* aforesaid, widow, administratrix of all and singular the goods and chattels, rights and credits, which were of *Richard Sealy* the younger,

younger, her late husband, deceased, who died intestate, in a plea of debt of one hundred pounds of and upon the said two writings obligatory, and such proceedings were had thereupon in the same court of the bench in the aforesaid plea, that afterwards, to wit, on the said octave of *St. Hilary*, in the same *Hilary* term, in the ninth year aforesaid, in the same court of the bench, and by the judgment and consideration of the said court, the said *Margaret* recovered against the said *Gertrude* her said debt of one hundred pounds, and also three pounds ten shillings for her damages which she had sustained by reason of the detaining of the said debt, to be levied of the goods and chattels which were of the said *Richard Sealy* the younger, at the time of his death, being in the hands of the said *Gertrude*, to be administered if she had so much thereof in her hands to be administered, and if she had then the damages aforesaid to be levied of the proper goods and chattels of the said *Gertrude*, as by the record and process thereof in the same court of the said lord the King of the bench aforesaid remained, more plainly appear; which said judgment so had and obtained, was so had and obtained for a true and just debt, and the said judgment still remains in full force and effect, and in no wise reversed, vacated, annulled, or satisfied.

Several other judgments are likewise pleaded in the very same manner; and then it goes on—

AND the said *Gertrude* further saith, that she hath fully administered all and singular the goods and chattels which were of the said *Richard Sealy* the younger, at the time of his death, which have ever come to her hands to be administered, and that she the said *Gertrude* hath no goods or chattels which were of the said *Richard Sealy* the younger, at the time of his death in her hands to be administered, nor had she on the day of the exhibiting the bill of the said *Richard Sealy* the now plaintiff, nor ever after, and this she is ready to verify; wherefore she prays judgment whether the said *Richard Sealy*, the now plaintiff, ought to have or maintain his said action therefore against her, &c. (*with this*) that she

the said *Gertrude* will verify that the said *Richard Sealy* the younger, named in the several records of the said several judgments so as aforesaid recovered, and the said *Richard Sealy* the younger, mentioned in the said bill of the said *Richard Sealy* the now plaintiff, is one and the same person, and no other or different; and that the said *Gertrude* the now defendant, and the said *Gertrude* in—(*Just as before, &c.*)

R. Acherley.

AND the said *Richard* says, that by any thing above alleged by the said *Gertrude* in pleading, he ought not to be barred from having his said action against her, because he says that the several judgments aforesaid, and every of them, were had and obtained, and are still kept on foot; and suffered to be and remain in force by the fraud and covin of the said *Gertrude*, had at *Brewton* aforesaid, with intent to deceive and defraud the said *Richard Sealy* of his true and just debt aforesaid, and this he is ready to verify; wherefore he prays judgment, and that his said debt, together with his damages by reason of the detaining of the same, may be adjudged to him, &c.

R. Draper.

AND the said *Gertrude* saith, that the said several judgments were not, nor any of them were had and obtained, nor are they, or any of them, kept on foot and suffered to be and remain in force by the fraud and convin of her the said *Gertrude*, had at *Brewton* aforesaid, with intent to deceive and defraud the said *Richard Sealy*, the now plaintiff, of his debt aforesaid, as the said *Richard Sealy* hath above in his replication aforesaid alleged, and of this she puts herself on the country.

Mr. Draper's directions on the above pleading.

Richard should reply, that the judgments were had on bonds for payment of small sums, and but little due upon them, and the executrix hath assets to pay the small sums, and the creditors are willing to accept them, but the executrix keeps the judgment on foot by fraud, and the

Replication,
that the
judgments
were kept on
foot by the
defendant by
fraud.

Rejoinder.

Issue joined.

the issue must be upon the fraud, and then upon the trial; if plaintiff can prove that the executrix has any more on her hands than will pay the lesser sums, he will have a verdict. As the term of years (for there is a mortgage on the leasehold estate, and a bond given for collateral security, and judgment on that bond, which the executrix likewise sets up in her plea against plaintiff's demands) is valued in the inventory, the mortgage money must first be allowed, and the rest of the value as assets; the judgment recovered on the bond for performing covenants is no otherwise a fraud, but is a security for the mortgage money; if it had been a freehold estate, it might have another consideration.

R. Draper.

Sir John Trelawny, Bart. *versus* Dove.

By admini-
strators a-
gainst an ex-
ecutor, on
his testator's
bond.

—To wit. Sir John Trelawny, Bart. administrator of all and singular the goods and chattels, rights and credits of Sir Jonathan Trelawny, Bart. late lord bishop of Winchester, deceased, who died intestate, complains of Henry Dove, executor of the last will and testament of William Dove, yeoman, deceased, in custody of the marshal, &c. of a plea that he render to him two hundred pounds of lawful money of Great Britain, which he unjustly detains from him. FOR THAT WHEREAS the said William in his life time, to wit, on the nineteenth day of December, in the year of our Lord one thousand seven hundred and fifteen, at Ringwood, in the county aforesaid, by his certain writing obligatory, sealed with his own seal, and now shewn to the court of our said lord the King now here, bearing date on the day and year aforesaid, acknowledged himself to be held and firmly bound to the said Jonathan in his life time in the aforesaid two hundred pounds, to be paid to the said Jonathan, his executors or administrators, whenever afterwards he should be thereunto required; and for the true payment of the said sum of two hundred pounds the said William bound himself, his executors and administrators, by the said writing obligatory; yet the said William in his

life time, nor the said *Henry* since the death of the said *William*, although often required, have not, nor hath either of them paid the said two hundred pounds to the said *Jon.* in his life time, or to the said *Sir John* since the death of the said *Sir Jonathan* (to which said *Sir John* administration of all and singular the goods and chattels, rights and credits which belonged to the said *Sir Jonathan* at the time of his death, afterwards, to wit, on the sixth day of *December*, in the year of our Lord one thousand seven hundred and twenty one, at *Ringwood* aforesaid, in the county aforesaid, by *William*, by divine providence, archbishop of *Canterbury*, primate and metropolitan of all *England*, was duly committed) but have hitherto altogether refused to pay the same to them, or either of them, and the said *Henry* still doth refuse to pay the same to the said *Sir John*, to the damage of the said *Sir John* twenty pounds, and thereof he brings his suit; and the said *Sir John* brings here into the court of our sovereign lord the King the said letters of administration, which shew the commission of the said administration to the said *Sir John* in form aforesaid, and which bear date on the day and year last mentioned, &c*.

Nugent versus Urquhart.

— To wit. *Richard Nugent*, son and heir at law of *Jonathan Urquhart*, deceased, complains of *For rent, at the suit of an heir.*

—, in custody of the marshal, &c. of a plea that he render to him fourteen pounds of lawful money of *Great Britain*, which he owes to him, and unjustly detains from him, for this, THAT WHEREAS the said *Jonathan Urquhart* in his life time, to wit, on the twenty fourth day of *January*, in the year of our Lord one thousand seven hundred and twenty six, at *K.* in the county aforesaid, by a certain indenture then and there made between the said

* *Executor pleaded a judgment against his testator, and plene administravit, except ten pounds; plaintiff replied, and issue was taken the fraud.*

said _____, by the name of _____, of K. in the county of W. dyer, of the one part, and the said J. U. by the name of J. U. of the same place, gardener, of the other part (the other part of which said indenture, sealed with the seal of the said J. U. the said R. brings here into court, the date whereof is the day and year aforesaid) demised, leased, set, and to farm let unto the said J. U. his executors administrators and assigns, all, &c.* To have and to hold the said, &c. and all and singular other the premises by the said indenture demised, with the appurtenances (except before excepted) unto the said J. U. his executors, administrators and assigns, from the second day of *February*, next ensuing the day of the date of the said indenture, for and during and unto the full end and term of twenty one years from thence next ensuing, and fully to be compleat and ended, yielding and paying thereore yearly and every year during the said term unto the said J. his heirs and assigns, the yearly rent or sum of fourteen pounds of lawful money of *Great Britain*, at two days or times of payment in the year, that is to say, at *Whitsuntide* and *Saint Martin the Bishop* in winter, by even and equal portions, the first payment to begin and be made at *Whitsuntide* then next ensuing, as by the said indenture may more fully appear; by virtue of which said demise the said J. U. entered into the said demised premises, with the appurtenances (except before excepted) and was possessed thereof for the term thereof demised as aforesaid, the reversion thereof, with the appurtenances belonging to the said J. his heirs and assigns; and being so possessed, and the reversion thereof belonging as aforesaid, he the said J. afterwards, to wit, on the first day of *April*, in the year of our Lord one thousand seven hundred and thirty three, at K. aforesaid, died seised of such his estate of and in the said reversion, at whose death the said reversion, with the appurtenances, descended to the said R. as son and heir of the said J. whereby he became seised, and was seised of and in the said reversion, with the appurtenances,

* Insert the words as in lease, with the parcel.

nances, and being so seised, and the said *J. U.* being so possessed of the said demised premises, with the appurtenances, fourteen pounds of the rent aforesaid for one year, ending at the feast of *St. Martin the Bishop*, in winter, in the year of our Lord one thousand seven hundred and thirty four, to the said *R.* from the said *J. U.* became in arrear and still remain unpaid, whereby an action hath accrued to the said *R.* to demand and have of the said *J. U.* the said fourteen pounds; yet the said *J. U.* (although often requested) hath not yet paid the said fourteen pounds, or any part thereof to the said *R.* but to pay the same to him hitherto hath, and still doth refuse, to the damage of the said *R.* ten pounds, and thereof he brings his suit, &c.

Haynes versus Rayner.

—To wit. *Thomas Rayner* was attached by his present Majesty's writ of privilege issuing out of this court here, to answer *William Haynes*, gent one of the attornies, &c. of a plea of debt, and whereupon the said *William Haynes* in his proper person saith that the said *Thomas Rayner* hath not rendered to him the sum of two hundred and thirty one pounds which he owes to him, and unjustly detains from him. FOR THAT WHEREAS the said *Thomas Rayner*, on the eighteenth day of *January*, in the year of our Lord one thousand seven hundred and thirty two, at *Penrith*, in the said county of *C.* by a certain indenture then and there made between the said *Thomas Rayner*, by the name of *Thomas Rayner* of, &c. of the one part, and the said *William Haynes* by the name of *William Haynes* of, &c. of the other part, (one part of which indenture, sealed with the seal of the said *Thomas Rayner*, the said *William Haynes* brings here into court, the date whereof is the day and year aforesaid) for the consideration therein particularly mentioned, did grant, bargain, sell, release and confirm unto the said *Thomas Haynes*, in his actual possession, then being by virtue of a bargain and sale for one whole year to him thereof made by the

On a covenant in a mortgage.

said *Thomas Rayner*, by indenture bearing date the day next before the day of the date thereof, and by virtue of the statute made for transferring uses into possession, and to his heirs and assigns, all that freehold messuage, &c. and all and singular other the premises which were granted, &c. conveyed, or intended to be granted and conveyed in certain indentures of release recited in the said indenture now brought into court, or either of them, with their and every of their appurtenances, and also all other the messuages, lands, &c. To have and to hold the said messuage or tenement, and all and singular other the premises mentioned or intended to be thereby granted or released, with their appurtenances, to the said *William Haynes*, his heirs and assigns for ever; provided always nevertheless, and the said *William Haynes* by the said indenture now brought into court, for himself, his heirs, executors and administrators, did covenant, promise and agree to and with the said *Thomas Rayner*, his heirs and assigns, that if the said *Thomas Rayner*, his executors or administrators, did and should well and truly pay, or cause to be paid, to the said *William Haynes*, his executors, administrators or assigns, the sum of two hundred and thirty one pounds, with interest for the same after the rate of five pounds by the hundred by the year upon the eighteenth day of *July* next ensuing the date thereof, without any abatement, &c. then and in such case he the said *William Haynes*, his heirs and assigns, should and would, at the request, cost and charges of the said *Thomas Rayner*, his heirs or assigns, assign and convey all and singular the premises mentioned or intended to be thereby granted or released, with their appurtenances, unto and to the use of the said *Thomas Rayner*, his heirs or assigns, or as he or they should direct; and the said *Thomas Rayner* by the said indenture last mentioned, for himself, his heirs, executors and administrators, did covenant, promise and agree to and with the said *William Haynes*, his executors, administrators and assigns, that he the said *Thomas Rayner*, his heirs, executors or administrators, should and would well and truly pay, or cause to be paid to the said *William Haynes*

his executors, administrators or assigns, the said sum of two hundred and thirty one pounds, with interest for the same after the rate aforesaid, upon the said eighteenth day of *July* next ensuing the date thereof, without any abatement or deduction of or for any taxes, assessment, or other matter or thing as aforesaid, according to the true intent and meaning of the said last mentioned indenture, as by the same indenture more fully appears; and the said *William Haynes* doth aver that the said *Thomas Rayner* did not pay, or cause to be paid to the said *William Haynes* the said sum of two hundred and thirty one pounds, with interest for the same after the rate aforesaid, upon the said eighteenth day of *July* next ensuing the date of the said last mentioned indenture, but the said sum of two hundred and thirty one pounds yet remains due and unpaid, whereby an action accrued to the said *William Haynes* to demand and have of the said *Thomas Rayner* the sum of two hundred and thirty one pounds; nevertheless the said *Thomas Rayner* (although often requested) hath not paid the said *William Haynes* the said sum of two hundred and thirty one pounds, or any part thereof, but hath refused, and still doth refuse to pay him the same, whereupon the said *William Haynes* saith that he is injured, and hath damage to the value of twenty pounds, whereof he brings his suit, &c.

DEMURRER.

On a penal
bill.

—To wit. **S.** H. late of, &c. otherwise called, &c. was summoned to answer **J. H.** gent. of a plea, that he render to him one hundred and sixty pounds, of good and lawful money of *Great Britain*, which he owes to him and unjustly detains (*and so forth*). And whereof the said **J.** by **A. B.** his attorney, saith, **THAT** WHEREAS the aforesaid **S.** on the eighth day of *February*, in the year of our Lord one thousand seven hundred and thirty eight, at in the said county, by a certain bill obligatory in writing, sealed with his seal, and by him as his deed to the said **J.** then and there delivered, which the said **J.** (sealed with the seal of the said **S.**) brings here into court, bearing date the same day and year, bound himself, his heirs, executors and administrators, and every and either of them jointly and severally, in the sum of one hundred and sixty pounds of like lawful money of *Great Britain*, to pay unto the said **J.** the sum of eighty four pounds of like lawful money, at or before the twenty sixth day of *June* next ensuing the date of the said bill obligatory, with lawful interest for the same. And the said **J.** in fact saith, that the said **S.** did not pay or cause to be paid unto the said **J.** the aforesaid eighty four pounds, together with lawful interest for the same, at or before the said twenty sixth day of *June* next ensuing the date of the said bill, which he ought

to have paid him at or before that day, according to the form and effect of the said bill, whereby an action accrued to the said J. to demand and have of the said S. the one hundred and sixty pounds; notwithstanding which, the said S. (although oftentimes requested) hath not paid the said one hundred and sixty pounds, nor any part thereof, to the said J. but hath altogether refused, and yet doth refuse to pay him the same, to the damage of the said J. one hundred pounds, and therefore he bringeth suit (*and so forth*).

AND the aforesaid J. by A. B. his attorney, comes Replication. and defends the force and injury, when, &c. and saith, that the declaration aforesaid, and the matter therein contained, are not sufficient in law to enable the said C. to maintain having his aforesaid action against the said J. to which said declaration made in form aforesaid, he the aforesaid J. hath no occasion, nor by the law of the land is he obliged in any wise to answer, and thus he is ready to verify; whereupon for want of a sufficient declaration in that behalf, the said J. prays judgment if the said C. ought to have or maintain his aforesaid action against him, &c.

ERROR.

E R R O R.

Fennel versus Bodwick.

Transcript of the paper book in error upon a transcript of the record out of the borough court of Devizes.

The writ of
error.

GEORGE the Second, &c. To the mayor and burgesſes of the borough of *Devizes*, greeting; forasmuch as in the record and proceſs, and alſo in giving of judgment in a plaint which was before you in our court of the ſaid borough without our writ, *between William Fennel and William Bodwick, of a certain debt which the ſaid William Fennel demandeth of the ſaid William Bodwick*, as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *William Bodwick*, as by his complaint we are informed, we, willing that the ſaid error, if any be, be duly amended, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given thereupon, then you ſend to us diſtinctly and plainly, under your ſeal, the record and proceſs of the ſaid plaint, with all things touching the ſame, and this writ, ſo that we may have them from the day of *St. Michael*, in three weeks, whereſoever we ſhall then be in *England*, that by inſpecting the records and proceſs aforeſaid, we may cauſe further to be done thereupon for amending the ſaid error, as of right, and according to the law and cuſtom of *England* ſhall be meet to be done.

Witness

Witness, ourselves at *Westminster*, the twenty third day of *July*, in the eighteenth year of our reign.

THE execution of this writ appears in a certain schedule to this writ annexed.

Robert Sloper, mayor
of the borough of *Devizes*.

Borough incorporate of *Devizes*, in the county of
Wilts.

PLEAS in the court of record of our sovereign lord the King of the borough aforesaid, in the sessions hall then held by virtue of letters patent of our late sovereign lord king *Charles* the First, over *England*, &c. under his great seal of *England*, bearing date at *Westminster* the fifth day of *June*, in the fifteenth year of his reign, over *England*, &c. granted to the mayor and burgessees of the borough aforesaid, held before *Richard Smith*, gent. mayor of the said borough, *John Garth*, Esq; recorder, of the same borough, *Peter Clarke*, *Edward W.* and *Robert S.* gent. capital burgessees, counsellors of the said borough, on *Friday* the fifth day of *August*, in the seventeenth year of the reign of our sovereign, &c. and in the year of our Lord one thousand seven hundred and forty three.

At this court comes *William Fennel* in his proper person, and levies his complaint against *William Bodwick*, of a plea of debt upon demand of four pounds, and finds in the same court, pledges of prosecuting his said complaint, to wit, *John Doe* and *Richard Roe*, and demands from the same court here process to be made thereon against the aforesaid *William Bodwick* in the plea aforesaid, whereupon the bailiffs and serjeants at mace of the borough aforesaid, and ministers of the court here, are commanded by the same court here, that they and every of them jointly and separately take the said *William Bodwick* if he shall be found within the said borough and jurisdiction of the same court, and him safely keep, so that they have his body before the mayor,

Letters patent, 5 June, 15 Car. 1. Court held 5 Aug. 17. Geo. II. Mayor, recorder and three capital burgessees.

Plaint.

Pledges.

Award of process to bring defendant in at the next court on 2d September.

mayor, recorder, and capital burgesſes, counſellors of the ſaid borough, at the next court of record of our ſaid ſovereign lord the King of the borough aforeſaid, in the *ſeſſion hall there in form aforeſaid, to be holden on Friday the ſecond day of September next enſuing*, to answer to the aforeſaid *William Fennel* of the plea aforeſaid, and that they have then there the ſaid precept; the ſame day is given by the ſame court there to the aforeſaid *William Fennel* in the plea aforeſaid, then, &c. at which ſaid next court of record of our ſaid ſovereign lord the King of the borough aforeſaid, in the ſeſſions hall then *held by virtue of the ſaid letters patent of our ſaid late ſovereign lord king Charles the Firſt*, before the ſaid *Richard Smith*, gent. mayor of the ſaid borough, *Thomas G. Eſq*; recorder of the ſame borough, and *H. W.* and *P. S.* gentlemen, capital burgesſes, counſellors of the ſaid borough, on *Friday the ſaid ſecond day of September*, in the ſeventeenth year of the reign of his ſaid majeſty King *George the Second*, comes the aforeſaid *William Fennel* in his own proper perſon, and offers himſelf againſt the aforeſaid *William Bodwick* in the plea of his complainant aforeſaid, and the bailiffs and ſerjeants at mace of the borough aforeſaid, returned here before the mayor, recorder and capital burgesſes, counſellors of the ſaid borough, the ſaid precept in all things ſerved and executed, to wit, *that they had taken the body of the ſaid William Bodwick, whoſe body they have ready here in court*, as by the ſaid precept they are commanded; and hereupon at this ſame court come *John Doe of the borough aforeſaid, yeoman*, and *Richard Roe of the ſame borough, yeoman*, and become bail for the ſaid *William Bodwick* in the plea of his complainant aforeſaid, to wit, that if, &c. and the ſaid *William Bodwick*, puts in his place *Solomon Hughes* the younger, his attorney, upon which the aforeſaid *William Fennel* puts in his place *Samuel Salmon* his attorney, and prays a day to declare until the next court of record of our ſaid ſovereign lord the King of the borough aforeſaid, in the ſeſſions hall, then on *Friday the twenty third day of September inſtant*, in form aforeſaid to be holden, and he

At the next
court.

Comes
plaintiff.

Bailiff, &c.
returned
precept.

Bail againſt
Doe and Roe.

Defendant
names an
attorney;
Plaintiff
names at-
torney and
prays a day
to declare
till 23 Sep.

has

has it &c. the same day is given to the aforesaid William Bodwick; here, &c. at which same next court of record of our said sovereign lord the King of the said borough, in the sessions hall there held by virtue of the letters patent aforesaid, before the said Richard Smith, gent. mayor of the said borough, John Garth, Esq; recorder of the same borough, and P. C. E. W. and R. S. gentlemen, capital burgessees, counsellors of the borough aforesaid, on Friday the said twenty third day of September, in the seventeenth year of the reign of his said majesty King George the Second, come as well the aforesaid William Fennel as the aforesaid William Bodwick, by their attornies aforesaid; and the said William Fennel by his said attorney now declares against the said William Bodwick in the same court here in his plaint aforesaid, which said declaration follows in these words, to wit, Borough incorporate of Devizes, in the county of Wilts. William Fennel complains against William Bodwick of a plea, that he render to the said William Fennel four pounds of lawful money of Great Britain, which he owes to the said William Fennel, and unjustly detains, &c. and hath found pledges of prosecuting his said plaint, to wit, John Doe and Richard Roe, and whereupon the said William Fennel by S. S. his attorney says, THAT WHEREAS the borough of Devizes, in the county of Wilts, is, and from time whereof the memory of man is not to the contrary, hath been an ancient borough, and that the inhabitants and freemen of the said borough from the time whereof the memory of man is not to the contrary, were, and yet are a body corporate and politic in deed and name, by the name of the mayor and burgessees of the borough of Devizes, and that the late King Charles the First, by his letters patent, sealed with his great seal of England, which the said William Fennel brings here into court, bearing date at Westminster, the fifth day of June, in the fifteenth year of his reign, of his special grace, certain knowledge and mere action, did grant to the then mayor and burgessees of the borough of Devizes and to their successors for

On that day
plaintiff de-
clares.

Declaration

Devizes an
ancient bo-
rough and
immemorial
Inhabitants
and freemen
immemori-
ally a corpo-
rate body.

That Char-
les I. created
the corpo-
ration.

That the mayor, recorder, or his deputy, and a major part of the capital burgeses to make bye laws,

for ever, *That the mayor of the said borough for the time being, and the Recorder of the said borough for the time being, and in the absence of the said recorder, his deputy, and the capital burgeses of the said borough for the time being, or the major part of them, of whom the mayor of the said borough, and recorder of the said borough for the time being, or in his absence his deputy, the said lord the King willed should be two, should have from time to time, and at all times thereafter full power and authority to constitute, make and ordain all such reasonable ordinances, and bye laws, as to them in their discretion should seem profitable and necessary for the good government of the burgeses, artificers and inhabitants of the said borough for the time being, and for declaring in what manner and order the said mayor and burgeses and artificers, inhabitants and residents of the said borough should behave and demean themselves in their offices, functions, and businesses within the said borough, liberties, precincts and limits of the same for the time being, and otherwise for promoting the good and public utility and government of the said borough; and also for the better promotion, management, ordering and disposing of the lands, tenements, possessions, revenues, and hereditaments to the said mayor and burgeses, and their successors, given, granted or assigned, or thereafter to be given, &c. and in, touching, or in any manner concerning any other affairs and businesses whatsoever of the said borough, or the estate, &c. thereof; and that the said mayor and recorder, and in the absence of the recorder, his deputy, and the capital burgeses, for the time being or the major part of them, as often as such laws, &c. should be made or established as aforesaid, might impose or assess such reasonable pains, penalties and punishments, by imprisonment of the body, or by fines and amerciaments, or by some of them, upon persons offending against such bye laws, &c. as to the same mayor, &c. should seem to be reasonable and requisite; and that they might have and levy the same fines and amerciaments without any impediment of the said late King, &c. all and every of which*

to impose pains and fines,

and that they might levy them.

bye

bye laws, &c. the said late King willed to be observed, &c. so that such bye laws, &c. should not be repugnant to the laws, &c. of this kingdom, as by the said letters patent here into court brought more fully appear; and the said *William Fennel* further says, that within the said borough *there are*, and from the time whereof the memory of man is not to the contrary, there have been divers guilds, fraternities and companies of artificers and tradesmen, burgeses of the said borough, and that there now is, and for all the time aforesaid hath been, a certain ancient and laudable custom used and approved within the said borough, that is to say, That no person whatsoever, except such as hath been admitted a freeman of some one of the said guilds, fraternities, or companies within the said borough, hath sold or exposed to sale, or hath had a right to sell or expose to sale, or hath kept, or hath had a right to keep any shop or shops within the said borough for exposing to sale therein by retail, any goods, wares or merchandizes, (other than corn, grain, victual, wool, woollen or linen yarn, woollen or linen cloth of their own making only and none other) unless in open fairs, or hath used, or hath had a right to use any trade, mystery, or handicraft whatsoever within the said borough; and the said *William Fennel* further saith, *that* at a common council or assembly of the mayor, recorder, and capital burgeses of the said borough *held* within the said borough, and within the jurisdiction of this court, on the third day of *September*, in the fourteenth year of the reign of the lord the present King, by *Edward Welles*, gent. then mayor, *J. G.* Esq; then recorder, *J. E.* Esq; *A. B.* gent. *C. D.* &c. and *Charles Bernard*, being a capital burges of the said borough; and they the said *Edward Welles*, *J. G.* &c. being the major part of the then capital burgeses of the said borough, *they the said mayor, recorder*, and major part of the said then capital burgeses of the said borough, being so assembled, *then and there made a full, reasonable and useful bye law and ordinance*, for the good government of the said borough, and thereby ordained and established, *that if any person or persons not being*

Guilds of artificers and tradesmen. burgeses immemorably.

Custom that no one not admitted a freeman of one of the guilds should sell, &c.

3 Sep. 14
Geo. II. an
assembly before mayor,
recorder and
majority of
the capital
burgesses,

and then
reasonable
bye laws
made.

ing free of some or one of the guilds or fraternities within the said borough, should after the twenty third day of *October* then next, by any colour, ways or means whatsoever, either directly or indirectly, by him, her or themselves, or by any other (unless in open fairs) sell or expose to sale, or keep any shop or shops within the said borough for selling or exposing to sale therein by retail, any goods, wares or merchandizes, other than corn, grain, victual, wool, woollen or linen yarn, woollen or linen cloth, of their making only and none other, or therein should use any trade, mystery or handicraft whatsoever, the said *person* or persons respectively should forfeit the sum of four pounds of lawful money of *Great Britain*, for every time wherein such person or persons should offend in the premises or any of them, which forfeiture should be levied and recovered by distress or by action of debt, bill or plaint, to be taken, commenced, sued or prosecuted by any person or persons that should or would take, sue or prosecute for the same, which said ordinance or bye law so made, after the making thereof, to wit, upon the same day and year, and often afterwards, was published and promulgated at the borough aforesaid, and within the jurisdiction of this court; and the said *William Bodwick* afterwards, that is to say, on the twelfth day of *July*, in the seventeenth year of our said lord the present King, at the borough aforesaid, and within the jurisdiction of this court, *had notice* of the said ordinance or bye law; *nevertheless the said William Bodwick, who is not, nor ever was a freeman of any of the guilds, fraternities or companies within the said borough, but a foreigner and stranger to the said borough,* after he had notice of the said ordinance or bye law, that is to say, on the fourteenth day of *July*, in the seventeenth year of the reign of our said lord the present King, *did keep a shop within the said borough, and within the jurisdiction of this court, and did therein use the trade, mystery or handicraft of a shoemaker and cordwainer,* contrary to the custom aforesaid; by reason whereof an *action* hath accrued to the said *William Fennel*, to demand and have of the

Remedy by
distress or
action of
debt against
any that
would sue.

Bye law
published.

Defendant
had notice,

but defen-
dant after
notice, con-
trary to the
custom and
bye law kept
a shop, and
used the
trade of
cordwainer.

the

the said *William Bodwick* the aforesaid four pounds; nevertheless the said *William Bodwick*, although often required, the aforesaid four pounds to the aforesaid *William Fennel* hath not rendered, but the same to him to render hath altogether refused, and doth yet refuse, whereupon the said *William Fennel* saith that he is injured and hath damage of forty shillings, and therefore he brings his suit, &c.

AND the aforesaid *William Bodwick* by his said attorney comes and defends the force and injury when the said court shall consider thereof, and prays a day to answer to the said declaration until the next court of record of our said sovereign lord the King of the borough aforesaid, in the sessions hall there, on *Friday* the thirtieth day of *September* instant, in form aforesaid to be holden, and he has it, &c. the same day is given to the said *William Fennel* here, &c. before which day, to wit, on the feast of *St. Michael the Archangel*, in the seventeenth year of the reign of his said majesty King *George the Second*, the aforesaid *Richard Smith*, gent. mayor of the borough aforesaid, went out of his said office, and *Richard Sloper*, gent. then one of the capital burgessees of the said borough, on the same feast day, in the seventeenth year aforesaid, who was duly elected mayor of the same borough, then and there took his corporal oath before his last predecessor, and *John Garth*, Esq; recorder of the same borough, and the major part of the rest of the aforesaid capital burgessees of the common council of the said borough, then and there present, for the well, truly and faithfully executing the said office in all things touching the same office, and then and there was duly admitted to the execution of the same office, &c. at which said next court of record of our said sovereign lord the King of the borough aforesaid, in the sessions there held by virtue of the letters aforesaid, before the said *Richard Sloper*, gent. mayor of the said borough, *W. S.* gent. deputy recorder of the same borough, and *W. A. J. W.* gent. capital burgessees, counsellors of the aforesaid borough,

Day to answer, prayed till next court, 30 Sept.

29 Sept. *Smith* the mayor went out.

At the next court, viz. 30 Sept. parties appear;

on

further day
to 21 Oct.

Parties ap-
pear.

Defendant
demurs.

Day to reply
till 11 No-
vember.

on *Friday* the said thirtieth day of *September*, in the seventeenth year of the reign of his said majesty King *George* the second, come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies aforesaid; and hereupon the aforesaid *William Bodwick* prays a further day to answer unto the said declaration until the next court of record of our said sovereign lord the King, at the borough aforesaid, in the sessions hall there, on *Friday* the twenty first day of *October* next ensuing, in form aforesaid to be holden, and he has it, &c. the same day is given to the said *William Fennel* here, &c. at which said next court of record of our said sovereign lord the King of the borough, in the sessions hall there held by virtue of the letters patent aforesaid, before the said *Richard Smith*, gent. mayor of the said borough, *J. G.* Esq; recorder of the same borough, and *P. C.* and *W. A.* gents. capital burgeses, counsellors of the said borough, on *Friday* the said twenty first day of *October*, in the seventeenth year of the reign of his said majesty King *George* the Second, come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies aforesaid; and the aforesaid *William Bodwick* by the aforesaid *S. H.* the younger, his attorney, as before, defends the force and injury, when, &c. and says, that the said declaration in form aforesaid made and declared, and the matter therein contained, are not sufficient in the law for the said *William Fennel*, to have or maintain his said action against him the said *William Bodwick*, and that he the said *William Bodwick* has no need, nor is he obliged by the law of the land to answer the said declaration in manner and form aforesaid made and declared, and this he is ready to verify; wherefore for want of a sufficient declaration in this behalf, the said *William Bodwick* prays judgment, and that the said *William Fennel* may be barred from having his said action against him the said *William Bodwick*, &c. and the aforesaid *William Fennel* by his attorney aforesaid, prays a day to reply to the aforesaid *William Bodwick* until the next court of record of our said sovereign lord the King of the borough aforesaid, in the sessions hall

hall there, on *Friday* the eleventh day of *November* next ensuing, in form aforesaid to be holden, and he has it, &c. the same day is given to the aforesaid *William Bodwick* here, &c. at which said next court of record of &c. (*ut supra*) come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies aforesaid; and the aforesaid *William Fennel* by his said attorney saith, that notwithstanding any thing by the said *William Bodwick* above in his said plea alledged, he ought not to be barred from having his said action maintained against the said *William Bodwick*, because he saith that the said declaration and the matter therein contained are good and sufficient in law for him the said *William Fennel* to maintain his said action against the said *William Bodwick*, which said matter contained in the said declaration the said *William Fennel* is ready to verify; and because the said *William Bodwick* hath made no answer thereto, nor in any manner denied the same, the said *William Fennel* prays judgment and his said debt, together with his damage on occasion of the detaining the same to be adjudged him, &c. but because the court of record of our said sovereign lord the King of the borough aforesaid is not yet advised of rendering their judgment of and upon the premisses, a day is thereupon given to the parties aforesaid, until the next court of record of our said sovereign lord the King of the borough aforesaid, in the sessions hall there, on *Friday the twenty fifth day* of *November* instant, in form aforesaid to be holden, then and there to hear their judgment of and upon the said premisses, for that the said court here is not yet thereupon advised, &c. at which said next court of record of, &c. (*ut supra*) come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies aforesaid; but because the said court of record of our said sovereign lord the King of the borough aforesaid, is not yet advised of rendering their judgment of and upon the premisses, a further day is thereupon given to the parties aforesaid, until the next court of record of the borough aforesaid, at the sessions hall there, on *Friday*

Parties appear.

Plaintiff joins in demurrer.

Continuance to 25 November.

Parties appear.

Continuance to 23 December.

Parties appear.

Continuance to 13 January.

Appearance

Judgment as to the declaration.

Friday the twenty third day of December, &c. (*ut supra*) at which said next court of record, of &c. (*ut supra*) come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies, aforesaid; but because the said court of record of, &c. is not yet advised of rendering their judgment of and upon the premisses, a further day, &c. to the thirteenth day of January, &c. at which said next court of record of, &c. (*ut supra*) come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies; but because the said court, &c. (*here insert the several continuances and appearances, following continuance to the third of February and appearance, continuance to twenty fourth of February and appearance, continuance to the ninth of March and appearance, continuance to the sixth of April and appearance, continuance to the thirteenth of April and appearance, continuance to the eleventh of May and appearance, continuance to the eighth of June and appearance, continuance to the sixth of July*) at which said next court of record of our said sovereign lord the King of the borough aforesaid, in the sessions hall there held by virtue of the letters patent, &c. come as well the aforesaid *William Fennel* as the aforesaid *William Bodwick*, by their attornies aforesaid; and thereupon all and singular the premisses being seen, and by the court here in form aforesaid held, fully understood, and mature deliberation being had thereon, it seemeth to the said court of record of our said sovereign lord the King here, that the declaration aforesaid of the aforesaid *William Fennel* in form aforesaid made and declared, and the matter in the same contained, are good and sufficient in law for him the said *William Fennel* to have and maintain his said action against the aforesaid *William Bodwick*; therefore it is considered by the court here; that the aforesaid *William Fennel* do recover against the aforesaid *William Bodwick* his debt aforesaid, and also six pounds, six shillings and eleven pence for his damage which he hath sustained, as well by occasion of the detaining of the same debt, as also for his costs and charges by him laid out in and about his suit in this behalf, adjudged to the said *William Fennel*, by his consent, by the said court

court of record of our said sovereign lord the King, and the aforesaid *William Bodwick* in mercy.

Robert Sloper, mayor of the borough of *Devizes*.

AFTERWARDS, to wit, from the day of *Easter*, in fifteen days, before our lord the King, at *Westminster*, comes the said *William Bodwick* by *S. H.* his attorney and says, that in the record and proceedings aforesaid, and also in the giving judgment aforesaid, there is manifest error in this, to wit, that by the said record and proceedings it appears, that the said judgment given in form aforesaid was given for the said *William Fennel* against the said *William Bodwick*, when according to the laws of this kingdom the same judgment ought to have been given for the said *William Bodwick* against the said *William Fennel*; therefore in this there is manifest error; there is also error in this, to wit, for that by the record and proceedings aforesaid it appears, that there are many discontinuances in the said record and proceedings; therefore in this there is manifest error; there is also error in this, to wit, that it appears by the record and proceedings aforesaid, that there issued out of the said borough court, mentioned in the said record and proceedings, against the said *William Bodwick* in the aforesaid plea, a precept to take the body of the said *William Bodwick* before such time as any writ of precept, or summons or other process was issued against the said *William Bodwick* in the plea aforesaid; thereof in this there is manifest error; and the said *William Bodwick* prays, that for the errors aforesaid, and other errors appearing in the said record and proceedings, the said judgment may be reversed and wholly had for nought, and that the said *William Bodwick* may be restored to all things which he has lost on occasion of the said judgment, and that the said *William Fennel* may rejoin in the said errors, &c.

E. Bootle.

AND thereupon the said *William Fennel*, being present here in court in his own proper person, and having

ing heard the said record and proceedings, and also the several matters above assigned for error, read, freely says, that neither in the record and proceedings aforesaid, nor in the rendering of the judgment aforesaid is there error in any thing; and the said *William* prays that the court of our Lord the King, before the King himself now here, will examine the record and proceedings aforesaid, and also the said matters above assigned for error, and that the said judgment may be in all things affirmed, &c.

R. Draper.

EASTER TERM, 10 GEO. III.

Wiglesworth versus Dalison, Esq;

George the Third, by the grace of God, of Great-Britain, France and Ireland, King, Defender of the Faith, &c. To our right trusty and well behaved William Earl Mansfield, our Chief Justice, appointed to hold Pleas before us, greeting.

WHEREAS by a statute made in the parliament holden at *Westminster*, the twenty third day of *November*, in the twenty seventh year of the reign of the lady *Elizabeth*, late Queen of *England*, it was by authority of the same parliament, amongst other things enacted, That when any judgment at any time then after should be given in the court of *King's Bench* in any suit or action of debt, detinue, covenant, account, action upon the case, ejectment or trespass, first commenced or to be commenced there, other than such only where we should be a party, the plaintiff or the defendant against whom such judgment should be given, may at his election sue forth out of the court of *Chancery* a special writ of error, to be devised in the said court of *Chancery*, directed to the chief justice of the said court of *King's Bench* for the time being, commanding him to cause the record, and all things touching the said judgment to be brought before the justices

tices of the *Common Bench*, and the barons of the *Exchequer*, in the *Exchequer* chamber, to be examined by the said justices of the *Common Bench* and barons aforesaid, which said justices of the *Common Bench* and barons of the *Exchequer* as are of the degree of the coif, or six of them at the least, by virtue of the said act, shall thereupon have just power and authority to examine all such errors as shall be assigned or found in or upon the judgment, and thereupon to reverse or affirm the said judgment, as the law shall require; other than for errors to be assigned for or concerning the jurisdiction of the said court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration or other pleading, process, verdict or proceeding whatsoever; and that after the said judgment shall be affirmed or reversed, the said record and all things touching the same shall be removed and brought back into the said court of *King's Bench*, that such further proceedings may be made thereupon, as well for execution as otherwise, as shall appertain, as in the said statute is more fully contained; and forasmuch as in the record and process, as also in giving judgment in a plaint, which was before us by bill between *Charles Wiglesworth* and *Henry Dalison*, Esq; and *Richard Brownlow*, of a plea of trespass, as it is said manifest error hath intervened, to the great damage of the said *Henry* and *Richard*, as by their complaint we are informed, which said error no ways toucheth us or the jurisdiction of the said court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration or other pleading, process, verdict or proceeding whatsoever, as we are informed, we, therefore willing that the said error (if any be) be duly amended according to the form of the said statute, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you cause the record and process aforesaid, with all things touching the same, to come before our said justices of the *Common Bench*, and barons of our said *Exchequer*, into our said *Exchequer* chamber, on *Saturday* the thirteenth day of *November* next ensuing,

DECLARATIONS, PLEADINGS, &c.

and that the said justices and barons, viewing and examining the record and process aforesaid, may cause further to be done thereupon for amending the said errors, as of right, and according to the form of the said statute shall be meet to be done. Witness ourself at *Westminster*, the twenty third day of *June*, in the nineteenth year of our reign.

Gataker.

The answer of William Earl of Mansfield, Chief Justice, within named.

THE record and process of the plaint within mentioned, with all things touching the same, to the justices and barons within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

Mansfield.

Pleas before our lord the King, at Westminster, of the term of St. HILARY, in the nineteenth year of the reign of our sovereign lord George the Third, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and in the year of our Lord one thousand seven hundred and seventy nine.

Roll, 1789.

—To wit. *Charles Wiglesworth* appoints in his stead *John Blagden*, gent. his attorney, against *Henry Dalison*, Esq; and *Richard Brownlow*, in a plea of trespass.

—To wit. *Henry Dalison*, Esq; and *Richard Brownlow* appoint in their stead *Alexander Allen*, gent. their attorney, against the said *Charles Wiglesworth* in the plea aforesaid.

—To wit. Be it remembered that heretofore, that is to say, in *Michaelmas* term, in the thirteenth year

year of the reign of our sovereign lord *George the Third*, now King of *Great Britain*, and so forth, before our lord the King at *Westminster*, came *Charles Wiglesworth* by *John Blagden*, his attorney, and brought into the court of the said lord the King then there his bill against *Henry Dalison*, Esq; and *Richard Brownlow*, being in the custody of the marshal of the Marshalsea of our said lord the King before the King himself, of a plea of trespass, and there are pledges for the prosecution, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Lincolnshire*, to wit, *Charles Wiglesworth* complains of *Henry Dalison*, Esq; and *Richard Brownlow*, being in the custody of the marshal of the Marshalsea of our lord the present King, before the King himself, for that the said *Henry* and *Richard* on the first day of *August*, in the year of our Lord one thousand seven hundred and seventy six, and on divers other days and times between that day and the day of exhibiting this bill, with force and arms, at the parish of *Munton*, in the said county of *Lincoln*, mowed, cut down, seized, took, and carried away, the corn in the straw, to wit, five hundred cart loads of wheat, five hundred cart loads of rye, five hundred cart loads of barley, five hundred cart loads of beans, five hundred cart loads of peas, and five hundred cart loads of oats, of the said *Charles*, of the price of five hundred pounds, then standing, growing and being in and upon divers, to wit, one hundred acres of land, lying and being in a certain place called the *Clifts*, in the parish of *Munton* aforesaid, and converted and disposed of the said corn to their own use; and also for that the said *Henry* and *Richard* on the said first day of *August*, in the said year of our Lord one thousand seven hundred and seventy six, and on divers other days and times between that day and the day of exhibiting this bill, with force and arms broke and entered the said close of the said *Charles*, to wit, one close called the *Clifts*, at the parish of *Munton* aforesaid, and with feet in walking, trod down, consumed, and trampled upon the grass and corn, to wit, wheat, rye, barley, peas,

peas, beans and oats, of the said *Charles*, of the value of five pounds, then there growing, and with cattle, to wit, horses, mares, geldings, cows, oxen and sheep, eat up, depastured, trod down, consumed and spoiled other the grafs and other the corn, to wit, other wheat, rye, barley, peas, beans and oats, of the said *Charles*, of the value of other five pounds, there then growing, and with the wheels of carts, waggons and other carriages, turned up and subverted, damaged and spoiled the soil, to wit, twenty perches of the soil of the said *Charles*, there, and the hay, to wit, one hundred cart loads of hay of the said *Charles*, of the value of two hundred pounds, then there found and being, seized, took and carried away, and converted and disposed thereof to their own use, and then and there mowed, cut down, seized, took and carried away other the grafs, and corn in the straw, to wit, five hundred cart loads of grafs, five hundred cart loads of wheat, five hundred cart loads of barley, five hundred cart loads of peas, and five hundred cart loads of oats, of the said *Charles*, of the price of five hundred pounds, then standing, growing, and being in and upon the said last mentioned close of the said *Charles*, and converted and disposed of the said last mentioned grafs and corn to their own use; and also for that the said *Henry* and *Richard*, on the said first day of *August*, in the said year of our Lord one thousand seven hundred and seventy six, and on divers days and times between that day and the day of exhibiting this bill, with force and arms, at the parish aforesaid, seized, took and carried away the goods and chattels, to wit, one hundred cart loads of hay, five hundred cart loads of grafs, five hundred cart loads of rye in the straw, five hundred cart loads of barley in the straw, five hundred cart loads of peas in the straw, and five hundred cart loads of oats in the straw, of the said *Charles*, of the price of five hundred pounds, there then and there found and being, and converted and disposed thereof to their own use; and also for that the said *William* and *Richard*, on the said second day of *August*, in the

the said year of our Lord one thousand seven hundred and seventy six, and on divers other days and times between that day and the day of exhibiting this bill, with force and arms, at the parish of *Hibaldstow*, in the said county of *Lincoln*, mowed, cut down, seized, took and carried away all the corn in the straw, to wit, five hundred cart loads of wheat, five hundred cart loads of rye, five hundred cart loads of barley, five hundred cart loads of beans, five hundred cart loads of peas, five hundred cart loads of oats, of the said *Charles*, of the price of five hundred pounds, then standing, growing and being in and upon divers, to wit, one hundred acres of land, lying and being in a certain common and open field called *Hibaldstow Field*, in the parish of *Hibaldstow* aforesaid, and converted and disposed of the said last mentioned corn to their own use; and also for that the said *William* and *Richard*, on the second day of *August*, in the said year of our Lord one thousand seven hundred and seventy six, and on divers other days and times between that day and the day of exhibiting this bill, with force and arms broke and entered the close of the said *Charles*, to wit, one close called *Hibaldstow Lays*, at the parish of *Hibaldstow* aforesaid, and with feet in walking, trod down, consumed, and trampled upon other the grass and corn, to wit, wheat, rye, barley, peas, beans and oats, of the said *Charles*, of the value of five pounds, there then growing and being, and with cattle, to wit, horses, mares, geldings, cows, oxen and sheep, eat up, depastured, trod down, consumed, and spoiled the grass and corn, to wit, other wheat, rye, barley, peas, beans and oats, of the said *Charles*, of the value of other five pounds, there then growing, and with wheels, of carts, waggons, and other carriages, turned up, subverted, damaged and spoiled the soil, to wit, twenty perches of the soil of the said *Charles* there, and the hay, to wit, one hundred cart loads of hay of the said *Charles*, of the value of two hundred pounds, there then found and being, seized, took and carried away, and converted and disposed thereof to their own use, and then and there mowed,

ed, cut down, seized, took and carried away, other the grafs and corn in the straw, to wit, five hundred cart loads of grafs, five hundred cart loads of wheat, five hundred cart loads of rye, five hundred cart loads of barley, five hundred cart loads of peas, and five hundred cart loads of oats, of the said *Charles*, of the price of five hundred pounds, then standing, growing and being, in and upon the said last mentioned close of the said *Charles*, and converted and disposed of the said last mentioned grafs and corn to their own use; and also for that the said *William* and *Richard*, on the said second day of *August*, in the said year of our Lord one thousand seven hundred and seventy six, and on divers other days and times, between that day and the day of exhibiting this bill, with force and arms, at the parish of *Hibaldstow* aforesaid, seized, took and carried away the goods and chattels, to wit, one hundred loads of hay, five hundred cart loads of grafs, five hundred cart loads of wheat in the straw, five hundred cart loads of rye in the straw, five hundred cart loads of barley in the straw, five hundred cart loads of peas in the straw, and five hundred cart loads of oats in the straw, of the said *Charles*, of the price of five hundred pounds, then and there found, and converted and disposed thereof to their own use; and the said *William* and *Richard* then and there did other injuries to the said *Charles*, against the peace of our said lord the present King, and to the damage of the said *Charles* of one thousand pounds, and thereof he brings his suit, &c.

Plea.

AND now at this day, that is to say, on *Saturday* next after eight days of *St Hilary*, in this same term, until which day the said *William* and *Richard* had leave to imparle to the said bill, and then to answer the same, &c. as well the said *Charles* by his said attorney, as the said *William* and *Richard* by *Alexander Allen* their attorney, do come before our lord the King at *Westminster*, and the said *William* and *Richard* defend the force and injury, when, &c. and say that they are not guilty of the aforesaid trespass in manner and form as the said *Charles* above thereof complains against them,

them, and of this they put themselves upon the country, and the said *Charles* doth the like; and the said *William* and *Richard* for further plea, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, as to the mowing, cutting down, seizing, taking and carrying away the said corn in the straw, in the first count of the said declaration mentioned, standing, growing and being in and upon the said land lying and being in the said place, in the first count of the said declaration mentioned, called the *Clists*, and converting and disposing of the same corn to their own use, and the breaking and entering the said close in the second count of the said declaration, and with feet in walking, treading down, consuming and trampling upon the grass and corn in that count mentioned, there then growing, and with the cattle in the same second count of the said declaration mentioned, eating up, depasturing, treading down, consuming and spoiling the other grass and corn in the same count also mentioned, there then growing, and with the wheels of the carts, waggons, and other carriages, in the said second count of the said declaration mentioned, turning up, subverting, damaging and spoiling the soil there, and seizing, taking and carrying away the said hay, in the said second count of the said declaration mentioned, and converting and disposing thereof to their own use, and then and there mowing, cutting down, seizing, taking and carrying away the other grass and corn in the straw, in the same count likewise mentioned, then standing, growing and being in and upon the said close, in the said second count of the said declaration mentioned, converting and disposing of the said last mentioned grass and corn to their own use; and also as to the seizing, taking and carrying away the goods and chattels in the third count of the said declaration mentioned, and converting and disposing thereof to their own use, by the said *William* and *Richard*, above supposed to have been done, say that the said *Charles* ought not to have or maintain his aforesaid action thereof against them, because they say that the said place in the first count of

DECLARATIONS, PLEADINGS, &c.

of the said declaration mentioned, called the *Clift*, and the said close in the second count of the said declaration mentioned, at the said times, when, &c. were the same, and not other nor different, and that the corn in the straw in the first count of the said declaration mentioned, and the hay and corn in the second count of the said declaration mentioned, and the grafs in the second count of the said declaration lastly mentioned, and the goods and chattels in the third count of the said declaration mentioned, are the same hay, grafs and corn, and not other nor different, and the same hay, grafs and corn were standing, growing, and being in and upon the said close, in the said second count of the said declaration mentioned; and that the said close in the said second count of the said declaration mentioned, in which, &c. now is, and at the said time, when, &c. was a certain close of land lying and being in the said parish of *Muntzen*, containing, to wit, one hundred and forty acres of land, and that the same close, except thirty six acres thereof, is and at the said times, when, &c. was the close, soil and freehold of the said *William*; wherefore the said *William* in his own right, and the said *Richard*, as servant of the said *William*, and by his command, at the said times, when, &c. broke and entered the same close, except the said thirty six acres thereof, as the close, soil and freehold of the said *William*, and with their feet in walking, trod down, consumed, and trampled upon the said grafs and corn in the said first, second and third counts of the said declaration mentioned, as the grafs and corn of the said *William*, growing in his same close, soil and freehold, and with his said cattle in the said second count of the said declaration mentioned, eat up, depastured, trod down, consumed and spoiled the said other grafs and corn in the said first, second and third counts of the said declaration mentioned, as the grafs and corn of the said *William*, growing in his same close, soil and freehold, and with the wheels of the said carts, waggons, and other carriages, in the said second count of the said declaration mentioned, turned up, subverted, damaged and spoiled the said soil there, as the soil and freehold of

of the said *Wm.* and the said hay then and there found and being seized took and carried away, and converted and disposed thereof to the use of the said *William*, as the hay of the said *William*, in his same close, soil and freehold being and found, and then and there mowed, cut down, seized, took and carried away the said other grass and corn in the straw, in the said first, second and third counts of the said declaration mentioned, as the grass and corn then standing, growing, and being in and upon the said close, in the said second count of the said declaration mentioned (except the said thirty six acres thereof) and converted and disposed of the said last mentioned grass and corn to the use of the said *William*, as the grass and corn in the straw of the said *William*, standing, growing and being in the same close, soil and freehold, as it was lawful for them to do for the cause aforesaid, and this they are ready to verify; wherefore they pray judgment, whether the said *Charles* ought to have or maintain his said aforesaid action thereof against them, &c. and the said *William* and *Richard* for further plea of like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, as to the breaking and entering the said close in the said fifth count of the said declaration mentioned, and with feet in walking, treading down, consuming and trampling upon the said other grass and corn there then growing, and with the said cattle in the said fifth count of the said declaration mentioned, eating up, depasturing, treading down, consuming and spoiling the said other grass and corn there then growing, and with the wheels of the said carts, waggons, and other carriages in the said fifth count of the said declaration mentioned, turning up, subverting, damaging and spoiling the said soil there, and seizing, taking and carrying away the said hay in the said fifth count of the said declaration mentioned, and converting and disposing thereof to their own use, and then and there mowing, cutting down, seizing, taking and carrying away, the said other grass and corn in the straw, then standing, growing, and being in and upon the said last mentioned close, and

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converting and disposing of the said last mentioned grafs and corn to their own use; and also as to the seizing, taking and carrying away the said goods and chattels in the last count of the said declaration mentioned, and converting and disposing thereof to their own use by the said *William* and *Richard*, above supposed to have been done, say that the said *Charles* ought not to have or maintain his aforesaid action thereof against them, because they say that the hay and corn in the fifth count of the said declaration mentioned, and the grafs in the said fifth count of the said declaration lastly mentioned, are the same grafs and corn, and not other nor different, and that the same hay, grafs and corn were standing, growing and being in and upon the said close in the said fifth count of the said declaration mentioned; and that the said close in the said fifth count of the said declaration mentioned, in which, &c. now is, and at the same time, when, &c. was the close, soil and freehold of the said *William*; wherefore the said *William* in his own right, and the said *Richard*, as servant of the said *William*, and by his command, at the said times when, &c. broke and entered the same close as the close, soil and freehold of the said *William*, and with their feet in walking, trod down, consumed and trampled upon the said grafs and corn, in the said fifth and last counts of the said declaration mentioned, as the grafs and corn of the said *William*, growing in the same close, soil and freehold, and with the said cattle in the said fifth count of the said declaration mentioned, eat up, depastured, trod down, consumed and spoiled the said other grafs, in the said fifth count and last count of the said declaration mentioned, as the grafs and corn of the said *William*, growing in his same close, soil and freehold, and with the wheels of the said carts, waggons, and other carriages, in the said fifth count of the said declaration mentioned, turned up, subverted, damaged and spoiled the said soil there, as the soil and freehold of the said *William*, and the said hay there then found and being seized took and carried away, and converted and disposed thereof to the use of the said *William*, as the hay of the said *William*, in his same close

soil and freehold being and found, and then and there mowed, cut down, seized, took and carried away the said other grafs and corn in the straw, in the said fifth and last counts of the said declaration mentioned, then standing, growing and being in and upon the said last mentioned close, and converted and disposed thereof to the use of the said *William*, as the grafs and corn in the straw of the said *William*, standing, growing and being in his same close, soil and freehold, as it was lawful for them to do, for the cause aforesaid, and this they are ready to verify; wherefore they pray judgment, whether the said *Charles* ought to have or maintain his aforesaid action thereof against them, &c.

G. Hill.

AND the said *Charles*, as to the seizing, taking and carrying away of the said hay and grafs, in the third count of the said declaration mentioned, parcel of the said goods and chattels in that count mentioned, and converting and disposing thereof to their own use, and also as to the breaking and entering the said close, in the said fifth count of the said declaration mentioned, and with feet in walking, treading down, consuming and trampling upon the said grafs and corn there growing, and with the said cattle, in the said fifth count of the said declaration mentioned, eating up, depasturing, treading down, consuming and spoiling the said other grafs there then growing, and with the wheels of the said carts, waggons and other carriages, in the said fifth count of the said declaration mentioned, turning up, subverting, damaging and spoiling the said soil there, and seizing, taking and carrying away the said hay, in the said fifth count of the said declaration mentioned, and converting and disposing thereof to their own use, and mowing, cutting down, seizing, taking and carrying away the said other grafs then standing, growing and being in and upon the said last mentioned close, and converting and disposing of the said last mentioned grafs to their own use; and also as to the seizing, taking and carrying away of the said quantities of hay and grafs in the last count of the said declaration

claration mentioned, parcel of the said goods and chattels in that count mentioned, the said *Charles* freely here in court acknowledges that he will not further prosecute the said *William* and *Richard* of and upon, or for all or any of those trespasses, but further to prosecute the said *William* and *Richard* of, upon, or for those trespasses, or any of them, he the said *Charles* altogether disavows and refuses, therefore let the said *William* and *Richard* be thereof acquit, &c. and as to the said plea of the said *William* and *Richard*, whereof they have put themselves upon the country, except as to the said several trespasses concerning which the said *Charles* hath refused to prosecute, the said *Charles* doth so likewise, &c. and as to the said plea of the said *William* and *Richard*, by them secondly above pleaded in bar, as to the mowing, cutting down, seizing, taking and carrying away the corn in the straw, of the first count of the said declaration mentioned, standing, growing and being in and upon the said land lying and being in the said place, in the first count of the said declaration mentioned, called the *Clifts*, and converting and disposing of the same corn to their own use, and also as to the breaking and entering the said close, in the said second count of the said declaration mentioned, and with feet in walking, treading down, consuming and trampling upon the grass and corn in that count mentioned, there growing, and with the cattle in the same second count of the said declaration mentioned, eating up, depasturing, treading down, consuming and spoiling the other grass and corn in the same count also mentioned, there growing, and with the wheels of carts, waggons and other carriages, in the second count of the said declaration mentioned, turning up, subverting, damaging and spoiling the soil there, and seizing, taking and carrying away the said hay, in the said second count of the said declaration mentioned, and converting and disposing thereof to their own use, and then and there mowing, cutting down, seizing, taking and carrying away the other grass and corn in the straw, in the same count likewise mentioned, then standing, growing and being in and upon the said close, in the said second count of the

said declaration mentioned, and converting and disposing of the last mentioned grass and corn to their own use, and also as to the seizing, taking and carrying away the goods and chattels in the third count of the said declaration mentioned, except the hay and grass, parcel of the said goods and chattels, and converting and disposing thereof to their own use, by the said *William* and *Richard* above done, the said *Charles* says that he ought not by reason of any thing by the said *William* and *Richard* in that plea above alledged, to be barred from having and maintaining his aforesaid action thereof against them, because as to such of the said second plea as relates to the said several trespasses, in the said second count of the said declaration mentioned and above attempted to be justified, and also to the seizing, taking and carrying away the said goods and chattels, in the third count of the said declaration mentioned, except the said hay and grass, parcel thereof, and converting and disposing thereof to their own use, he says that he the said *Charles* exhibited his said bill against the said *William* and *Richard*, for that the said *William* and *Richard*, amongst other trespasses in the said declaration mentioned, on the said first day of *August*, in the said year of our Lord one thousand seven hundred and seventy six, and on divers other days and times before that day and the day of exhibiting the said bill of the said *Charles*, with force and arms broke and entered another and different part of the said close called the *Clifts*, in the said second count of the said declaration mentioned, than that part of the same close which the said *William* and *Richard*, in their said plea by them secondly above pleaded, have alledged to be the close, soil and freehold of the said *William*, that is to say, a certain part of the same close called the *Clifts*, containing divers, to wit, thirty six acres of land, which is and at the said time when, &c. was parcel of the glebe land of and belonging to the rectory of the parish of *Munton* aforesaid, and then occupied by the said *Charles* as tenant thereof, to one *Thomas Dalison*, clerk, then and still rector of the rectory of the parish of *Munton* aforesaid, and with feet in walking, trod down, consumed and

and trampled upon the grafs and corn of the said *Charles* there then growing, and with the said cattle in the said second count of the said declaration mentioned, eat up, depastured, trod down, consumed and spoiled other the grafs and corn of the said *Charles* there then also growing, and with the wheels of carts, waggons and other carriages, in the same count mentioned, turned up, subverted, damaged and spoiled the soil of the said *Charles* there, and the hay of the said *Charles* there, and the hay of the said *Charles* there then found, and being seized took and carried away, and converted and disposed thereof to their own use, and then and there mowed, cut down; seized, took and carried away other hay, grafs and corn in the straw, of the said *Charles*, then standing, growing and being in and upon the said glebe land, parcel of the said close called the *Clifts*, and converted and disposed of the said last mentioned hay, grafs and corn to their own use; and also for that the said *William* and *Richard*, at the said several days and times in the third count of the said declaration mentioned, with force and arms seized, took and carried away the said wheat, rye, barley, peas and oats in that count mentioned, which before the committing of those trespasses had been cut down and reaped by the said *Charles*, and which before the cutting down and reaping thereof grew in the said close called the *Clifts*, that is to say, part thereof in the said glebe land, and the residue thereof in other parts of the same close, and converted and disposed of the same goods and chattels to their own use; which said trespasses herein above newly assigned are other and different trespasses than the trespasses by the said *William* and *Richard* in their second plea attempted to be justified, and this the said *Charles* is ready to verify; wherefore inasmuch as the said *William* and *Richard* have not answered the said trespasses above anew assigned, the said *Charles* prays judgment, and his damages by reason of his committing of those trespasses to be adjudged to him, &c. and as to the said residue of the said trespasses by the said *William* and *Richard* in their said second plea attempted to be justified, except the seizing, taking and carrying away the said

hay and grafs, in the third count of the faid declaration mentioned, the faid *Charles* fays that true it is that the faid place in the firft count of the faid declaration mentioned, called the *Clifts*, now is, and at the times when, &c. was a certain clofe of land, lying and being in the faid parifh of *Munton*, containing divers, to wit, one hundred and forty acres of land, and that the fame clofe, except thirty fix acres thereof, is, and at the faid times, when, &c. was the clofe, foil and freehold of the faid *William*, as the faid *William* and *Richard*, in their faid plea by them fecondly above pleaded in bar have alledged for replication; nevertheless in this behalf the faid *Charles* fays, that long before the faid firft time, when, &c. to wit, on the fecond day of *March*, in the year of our Lord one thoufand feven hundred and fifty three, one *Ifabella Dalifon*, widow, now deceased, was feifed of the faid place called the *Clifts*, except the faid thirty fix acres thereof in the faid firft count of the faid declaration mentioned, in her demefne as of freehold, for and during the term of her natural life, and the faid *William* was then feifed of the reverfion thereof in his demefne as of freehold, and the faid *Ifabella* and *William* being fo feifed refpectively as aforefaid, afterwards, to wit, on the fame day and year laft aforefaid, at the parifh of *Munton* aforefaid, by a certain indenture then and there made between the faid *Ifabella* and the faid *William*, of the one part, and the faid *Charles* of the other part (one part of which faid indenture, fealed with the refpective feals of the faid *Ifabella* and *William*, the faid *Charles* now brings here into court, the date whereof is the fame day and year laft aforefaid) the faid *Ifabella* did demife and leafe, and the faid *William* did ratify and confirm unto the faid *Charles*, amongst other things, the faid place called the *Clifts*, except as aforefaid, with the appurtenances, To hold the fame unto the faid *Charles*, his executors, administrators and affigns, for the term of twenty one years, to be computed from the firft day of *May*, in the year of our Lord one thoufand feven hundred and fifty five, at and under a certain yearly rent therefore payable by the faid *Charles* to the faid *Ifabella*, during fo long time

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of the said term of twenty one years as she should naturally live, and from and after her decease, unto the said *William* and his heirs during the remainder of the said term; by virtue of which said demise, he the said *Charles* afterwards, to wit, on the second day of *May*, in the year last aforesaid, entered into the said place called the *Clifts*, except as aforesaid, (amongst other things) and became and was possessed thereof, and remained and continued so possessed thereof from thenceforth until the end and expiration of the said term of twenty one years so to him thereof demised as aforesaid; and the said *Charles* further says, that within the said parish of *Munton* there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every tenant and farmer of any lands within the same parish, for any term of years which hath expired on the first day of *May*, in any year, hath been used and accustomed, and of right ought to have, take and enjoy to his own use, and to reap, cut, and to carry away, when ripe and fit to be reaped and taken away, his way-going crop, that is to say, all the corn growing upon the said lands which hath before the expiration of such term been sown by such tenant and farmer upon any part of such lands, not exceeding a reasonable quantity thereof, in proportion to the residue of such lands, according to the course and usage of husbandry in the said parish, and which hath been left standing and growing upon such lands at the expiration of such term of years; and the said *Charles* further says, that he the said *Charles* being such occupier and tenant of the said land so demised to him as aforesaid, after the making of the said indenture of lease, and during the continuance and before the expiration of the said term, that is to say, in the year of our Lord one thousand seven hundred and seventy five, did sow with corn part of the said demised lands called the *Clifts*, being a reasonable quantity of the said demised premises in proportion to the residue thereof, according to the course and usage of husbandry in the parish of *Mun-*

ton aforesaid, and that the corn produced and raised by such sowing of the corn so sown as aforesaid, being the corn in the first count of the said declaration mentioned, at the end and expiration of the said term of twenty one years, in the said indenture of lease mentioned, and from thence until and at the said times when, &c. was standing and growing in and upon the said part of the said place called the *Clifts*, so demised to the said *Charles* as aforesaid, the said time not exceeding a reasonable time for the said corn to stand and grow there, in order to ripen and become fit to be cut and reaped; and the said *Charles* during all that time was lawfully possessed of the said corn as the absolute property of him the said *Charles*, by virtue of the customs aforesaid, to wit, at the parish of *Munton* aforesaid; and the said *Charles* being so possessed thereof as aforesaid, the said *William* and *Richard* of their own wrong, at the several times when, &c. mowed, cut down, and seized, took and carried away the said last mentioned corn, the same being then standing, growing and being in and upon the said part of the said place called the *Clifts* so demised to the said *Charles* as aforesaid, and converted and disposed of the same corn to their own use in manner and form aforesaid as the said *Charles* hath above thereof complained against them, and this the said *Charles* is ready to verify; wherefore inasmuch as the said *William* and *Richard* have above acknowledged the committing of those trespasses, the said *Charles* prays judgment, and his damages by reason of the committing of the same trespasses to be adjudged to him, &c. and the said *Charles* as to the said plea of the said *William* and *Richard* by them lastly above pleaded in bar, as to mowing, cutting down, seizing, taking, and carrying away the corn in the straw, in the fifth count of the said declaration mentioned, standing growing, and being in and upon the said close called *Hibaldstow Leys* in that count mentioned, and converting and disposing of the said last mentioned corn to their own use, and also as to the seizing, taking, and carrying away the said goods and chattels in the said last count of the said declaration

tion mentioned, except the said hay and grafs, parcel of the same goods and chattels in that count mentioned, and converting and disposing thereof to their own use by the said *William* and *Richard* above done, says that he the said *Charles* ought not by reason of any thing by the said *William* and *Richard* in that plea above alledged, to be barred from having and maintaining his aforesaid action thereof against them, because as to so much of the said last mentioned plea as relates to the mowing, cutting down, seizing, taking and carrying away the corn in the straw, in the fifth count of the said declaration mentioned, standing, growing, and being in and upon the said close called the *Hibaldstow Leys*, in that count mentioned, and converting and disposing thereof to their own use, the said *Charles* says that true it is that the said close in the said fifth count of the said declaration mentioned, in which, &c. now is, and at the said times when, &c. was the close, soil and freehold of the said *William*, as the said *William* and *Richard* in their said plea by them lastly above pleaded in bar, have alledged for replication; nevertheless in this behalf the said *Charles* says that long before the said first time, when, &c. to wit, on the second day of *March*, in the year of our Lord one thousand seven hundred and fifty three, one *Isabella Dalison*, widow, now deceased, was seised of the said close called *Hibaldstow Leys*, in the said fifth count of the said declaration mentioned, in her demesne as of freehold, for and during the term of her natural life, and the said *William* was then seised of the reversion thereof in his demesne as of freehold, the said *Isabella* and *William* being so seised respectively as aforesaid, afterwards, to wit, on the same day and year last aforesaid, at the parish of *Hibaldstow* aforesaid, by a certain indenture then and there made between the said *Isabella* and the said *William*, of the one part, and the said *Charles* of the other part (one part of which said indenture, sealed with the respective seals of the said *Isabella* and *William*, the said *Charles* now brings here into court, the date whereof is the same day and year last aforesaid) the said *Isabella* did demise and lease, and the said *William* did ratify and confirm

firm unto the said *Charles*, amongst other things, the said close called *Hibaldstow Leys*, with the appurtenances, To hold the same unto the said *Charles*, his executors, administrators and assigns, for the term of twenty one years to be computed from the first day of *May*, in the year of our Lord one thousand seven hundred and fifty five, at and under a certain yearly rent therefore payable by the said *Charles* to the said *Isabella*, during so long time of the said term of twenty one years as he should naturally live, and from and after her decease unto the said *William* and his heirs during the remainder of the said term; by virtue of which demise, he the said *Charles*, afterwards, to wit, on the second day of *May*, in the year last aforesaid, entered into the said close called *Hibaldstow Leys* (amongst other things) and became and was possessed thereof, and remained and continued so possessed thereof from thenceforth until the end and expiration of the said term of twenty one years so to him thereof demised as aforesaid; and the said *Charles* further saith, that within the parish of *Hibaldstow* there now is, and from time whereof the memory of man is not to the contrary, there hath been, a certain ancient and laudable custom there used and approved of, that is to say, that every tenant and farmer of any lands within the same parish, for any term of years which hath expired on the first day of *May* in any year, hath been used and accustomed, and of right ought to have, take and enjoy to his own use, and to reap, cut, and carry away, when ripe and fit to be reaped and taken away, his wa-ygoing crop, that is to say, all the corn growing upon the said lands, which hath before the expiration of such term been sown by such tenant upon any part of such lands, not exceeding a reasonable quantity thereof, in proportion to the residue of such lands, according to the course and usage of husbandry in the same parish, and which hath been left standing and growing upon such lands, at the expiration of such term of years; and the said *Charles* further says, that he the said *Charles* being such occupier and tenant of the said close, called *Hibaldstow Leys* aforesaid, after the making of the said indenture
of

of lease and during the continuance and before the expiration of the same, that is to say, in the year of our Lord one thousand seven hundred and seventy-five, did sow with corn part of the said demised close called *Hibaldstow Leys*, being a reasonable quantity of the same demised premises, in proportion to the residue thereof, according to the course and usage of husbandry in the parish of *Hibaldstow* aforesaid; and that the corn produced and raised by such sowing of the corn so sown at aforesaid, being the corn in the fifth count of the said declaration mentioned, at the end and expiration of the said term of twenty one years in the last mentioned indenture of lease mentioned, and from thence until, and at the said times when &c. was standing and growing in and upon the said close called *Hibaldstow Leys*, the said time not exceeding a reasonable time for the same corn to stand and grow there, in order to ripen and become fit to be cut and reaped; and the said *Charles* during all that time was actually possessed of the said corn as the absolute property of him the said *Charles*, by virtue of the custom aforesaid, to wit, at the parish of *Hibaldstow* aforesaid; and the said *Charles* being so possessed thereof as aforesaid, the said *William* and *Richard* of their own wrong, at the said several times, when, &c. mowed, cut down, seized, took and carried away the said corn, the same being then standing and growing, and being in and upon the said close called *Hibaldstow Leys*, and being the said corn in the straw in the fifth count of the said declaration mentioned, and converted and disposed of the said last mentioned corn to their own use, in manner and form as the said *Charles* hath above thereof complained against them, and this the said *Charles* is ready to verify; wherefore inasmuch as the said *William* and *Richard* have acknowledged the committing of the trespass last aforesaid, the said *Charles* prays judgment, and his damages by reason of the committing of that trespass to be adjudged to him, &c. and as to so much of the said last mentioned plea of the said *William* and *Richard* as relates to the seizing, taking and carrying away of the said goods and chattels in the last count of the said

saïd declaration mentioned, except the saïd hay and
 grafs, parcel of the same goods and chattels, and con-
 verting and disposing thereof to their own use, the
 saïd *Charles* says that the wheat, rye, barley, peas,
 and oats in the last count of the saïd declaration mention-
 ed, were certain quantities of wheat, rye, barley, peas
 and oats of the saïd *Charles*, which grew in the saïd
 close called *Hibaldstow Leys*, and which before the com-
 mitting of the trespasss in the saïd last count of the saïd
 declaration mentioned, were cut down and reaped by
 the saïd *Charles*, and were other than and different from
 the corn in the fifth count of the saïd declaration men-
 tioned, and no part of the goods and chattels in the
 saïd last plea of the saïd *William* and *Richard* mentioned,
 and this the saïd *Charles* is ready to verify; wherefore
 inasmuch as the saïd *William* and *Richard* have not an-
 swered the saïd trespasss herein lastly above anew as-
 signed, the saïd *Charles* prays judgment, and his damages
 by reason of the committing of that trespasss to be ad-
 judged to him, &c.

A. Chambre.

AND the saïd *William* and *Richard*, as to the saïd Rejoinder.
 trespasss of the saïd *Charles* first above anew assigned,
 and therein supposed to have been committed in the
 saïd glebe land, parcel of the saïd close called the
Clifts, say nothing in bar or preclusion of the saïd
 action of the saïd *Charles* in this behalf, therefore the
 saïd *Charles* ought to recover his damages by reason
 of the saïd trespasss above anew assigned in that behalf
 against them, &c. and the saïd *William* and *Richard*,
 as to the saïd plea of the saïd *Charles* by him above
 in reply pleaded, in the saïd plea of the saïd *William*
 and *Richard*, by them secondly above pleaded in bar
 as to the saïd residue of the saïd trespassses by the saïd
William and *Richard* in their saïd second plea justi-
 fied (except the seizing, taking and carrying away
 the saïd hay and grafs in the third count of the saïd
 declaration mentioned) say that the saïd *Charles* by
 reason of any thing in his same plea above in reply
 pleaded alledged, ought not to have or maintain his
 aforesaid action thereof against them, because pro-
 testing

testing that the said replication and the matter therein contained are not sufficient in law for the said *Charles* to have or maintain his aforesaid action against them, to which said replication the said *William* and *Richard* are not under any necessity to answer for a rejoinder, nevertheless they say, that true it is that such demise to the said *Charles* of the said place called the *Clifts*, except as aforesaid, with the appurtenances, was made and confirmed by the said *Isabella* and *William* in manner and form as the said *Charles* hath in his same plea above in reply pleaded, alledged; but the said *William* and *Richard* further say, that within the said parish of *Munton* there now is not, and from time whereof the memory of man is not to the contrary, there hath not been, a certain ancient and laudable custom there used and approved of, that is to say, that every tenant and farmer of any lands within the same parish, for any term of years which hath expired on the first day of *May*, in any year, hath been used and accustomed, and of right ought to have, take and enjoy to his own use, and to reap, cut and carry away, when ripe and fit to be reaped and taken away, his way-going crop, that is to say, all the corn growing upon the said lands, which hath before the expiration of such term been sown by such tenant and farmer upon any part of such lands, not exceeding a reasonable quantity thereof, in proportion to the residue of such lands, according to the course and usage of husbandry in the same parish, and which hath been left standing and growing upon such lands at the expiration of the term of years as the said *Charles* hath above in his same plea above in reply pleaded in that behalf alledged, and of this the said *William* and *Richard* put themselves upon the country, and the said *Charles* doth the like, &c. and the said *William* and *Richard* as to the said plea of the said *Charles* by him above in reply pleaded to the said plea of the said *William* and *Richard* by them lastly above pleaded in bar, as to the mowing, cutting down, seizing, taking and carrying away the corn in the straw, in the fifth count of the said declaration mentioned, standing, growing and being in and upon the said close called *Hibaldslow Leys*, in that count

men-

mentioned, and converting and disposing of the said last mentioned corn to their own use, and also as to the seizing, taking and carrying away the said goods and chattels in the said last count of the said declaration mentioned (except the said hay and grafs, parcel of the same goods and chattels in that count mentioned) and converting and disposing thereof to their own use by the said *William* and *Richard* above supposed to have been done, say that the said *Charles*, by reason of any thing in the same plea above in reply pleaded alledged, ought not to have or maintain his aforesaid action thereof against them, because protesting that the said replication, and the matters therein contained, are not sufficient in law for the said *Charles* to have or maintain his aforesaid action against them, to which said replication the said *William* and *Richard* are not under any necessity to answer, for rejoinder nevertheless they say, that true it is that such demise to the said *Charles* of the said close called *Hibaldstow Leys*, with the appurtenances, was made and confirmed by the said *Isabella* and *William* in manner and form as the said *Charles* hath in his said plea above in reply pleaded alledged, but the said *William* and *Richard* further say, that within the said parish of *Hibaldstow* there now is not, &c. from time whereof the memory of man is not to the contrary, there hath not been a certain ancient and laudable custom, there used and approved of, that is to say, that every tenant and farmer of any lands within the same parish for any term of years which hath expired on the first day of *May*, in any year, hath been used and accustomed, and of right ought to have, take and enjoy to his own use, and to reap, cut and carry away, when ripe and fit to be reaped and taken away, his way-going crop, that is to say, all the corn growing upon the said lands, which hath before the expiration of such term been sown by such tenant upon any part of such lands, not exceeding a reasonable quantity thereof, in proportion to the residue of such lands, according to the course and usage of husbandry in the same parish, and which hath been left standing and growing upon such lands at the expiration of such term of years as the

the said *Charles* hath above in his same plea above in reply pleaded in that behalf alledged, and of this the said *William* and *Richard* put themselves upon the country, and the said *Charles* doth the like, &c. and the said *William* and *Richard* as to the said trespasses above anew assigned as to the seizing, taking and carrying away the said wheat, rye, barley, peas and oats, as well in the said close called the *Clifts*, except the glebe as in the said close called *Hibaldstow Leys*, and converting and disposing thereof to their own use, say that they are not guilty of the trespasses so above anew assigned, in manner and form as the said *Charles* hath above complained against them, and of this they put themselves upon the country, &c. and the said *Charles* doth the like, &c. therefore as well to try this issue as the several other issues between the said parties above joined, and also to enquire what damages the said *Charles* has sustained by reason of the trespasses above newly assigned, above confessed to have been committed by the said *William* and *Richard*, let a jury come before our lord the King, at *Westminster*, on *Friday* next, after eight days from the day of the *Purification of the blessed Virgin Mary*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

AFTERWARDS the process thereof is continued between the parties aforesaid, of the plea aforesaid, by the jury aforesaid, being respited between them, before our lord the King, at *Westminster*, until *Wednesday* next, after fifteen days from the day of *Easter*, unless the justices of our lord the King aforesaid, to take the assizes in the county aforesaid, shall first come on *Saturday* the sixth day of *March* next, at the castle of *Lincoln*, in the said county of *Lincoln*, according to the form of the statute in such case made and provided for default of the jurors, because none of them did appear, at which day before the said justices of our said lord the King, the aforesaid *Charles* comes by the said *John Blagdon* his attorney aforesaid, and the said justices before whom, &c. sent hither their record had in these words, to wit, Afterwards, on the day, and at the place within mentioned,

mentioned, before Sir *John Skinner*, knight, and Sir *James Eyre*, knight, justices of our said lord the King, assigned to take the assizes in and for the within mentioned county of *Lincoln*, according to the form of the statute in such case made and provided, come as well the within named *Charles Wiglesworth* as the within mentioned *William Dalison* and *Richard Brownlow*, by their attorneys within named, and the jurors of the jury whereof mention is within made, being summoned and chosen, some of them, to wit, *Thomas Mainwaring*, *Thomas Coltman*, *George Appleby*, *Bently Bennet*, *John Melthorpe*, and *William Bury*, Esquires, come and are sworn upon that jury; and because the rest of the jury did not appear, therefore others of those standing about the court chosen for this purpose, are by the sheriff, at the request of the said *Charles*, and by the said command of the justices aforesaid, newly appointed, and whose names are added to the within written panel, according to the form of the statute in such case made and provided; which said jury so newly appointed, to wit, *Thomas Hardy*, *Robert Lum*, *Robert Hunton*, *Robert Cliffe*, *John Tallent*, and *Robert Dawber*, yeomen, being called, likewise come, who together with the jurors before impanelled and sworn, being chosen, tried and sworn to speak the truth of the matter within contained as to the first issue between the said *Charles* and the said *William* and *Richard* within joined, say, that the said *William* and *Richard* are guilty of the mowing, cutting down, seizing, taking and carrying away the corn in the straw, in the fifth count of the declaration within contained mentioned, standing, growing and being in and upon the said close called *Hibaldstow Leys*, in that count mentioned, and converting and disposing thereof to their own use, as the said *Charles* hath in his said declaration in that behalf alledged; and as to all the residue of the said trespass in the said declaration and new assignment within contained mentioned, except those whereof the said *Charles* hath above refused to prosecute, and those wherein the said *Charles* remains undefended, the jurors aforesaid upon their oath aforesaid say, that the said *William* and

and *Richard* are not guilty thereof, as the said *William* and *Richard* have in their pleas within mentioned in that behalf alledged; and as to the second issue between the parties aforesaid within joined, the jurors aforesaid, upon their oaths aforesaid say, that within the said parish of *Munton* within named, there now is not, nor from time whereof the memory of man is not to the contrary there hath not been a certain ancient and laudable custom there used and approved of, that is to say, that every tenant and farmer of any lands within the said parish, for any term of years which hath expired on the first day of *May*, in the year, hath been used and accustomed, and of right ought to have, take, and enjoy to his own use, and to reap, cut, and carry away when ripe and fit to be reaped, and taken away, his way-growing crop, that is to say, all the corn growing upon the said lands which hath before the expiration of such term been sown by such tenant and farmers upon any part of such lands, not exceeding a reasonable quantity thereof, in proportion to the residue of such lands, according to the course and usage of husbandry in the same parish, and which hath been left standing and growing upon such lands at the expiration of such term of years as the said *Charles* in his plea by him in reply within pleaded to the plea of the said *William* and *Richard*, by them secondly within pleaded in bar hath in that behalf alledged; and as to the third issue between the parties aforesaid within joined, the jurors aforesaid upon their oath aforesaid say, that within the parish of *Hibaldstow* within named, there now is, and from time whereof the memory of man is not to the contrary there hath been a certain ancient and laudable custom there used and approved of, that is to say, that every tenant and farmer of any lands within the same parish, for any term of years which hath expired on the first day of *May*, in any year, hath been used and accustomed, and of right ought to have taken, and enjoyed to his own use, and to reap, cut and carry away, when ripe and fit to be reaped and taken away, his way-growing crop, that is to say, all the

the corn growing upon the said lands which hath before the expiration of such term been sown by such tenant upon any part of such lands, not exceeding a reasonable quantity thereof, in proportion to the residue of such lands, according to the course and usage of husbandry in the same parish, and which hath been left standing and growing upon such land at the expiration of such term of years as the said *Charles* in his plea by him in reply within pleaded to the plea of the said *William* and *Richard*, by them lastly within pleaded in bar hath in that behalf alledged, and the jurors aforesaid upon their oath aforesaid assess the damages of the said *Charles* by him sustained by reason of the said trespasses by the said *Charles* first within anew assigned, and whereof the said *Charles* remains against the said *William* and *Richard* undefended, to one hundred and fifty two pounds, besides his costs and charges by him about his suit in this behalf expended; and as to the said trespass in mowing, cutting down, seizing, taking and carrying away the said corn in the straw, in the fifth count of the said declaration mentioned, standing, growing and being in and upon the said close called *Hibaldstow Leys*, in that count mentioned, and converting and disposing thereof to their own use, the jurors aforesaid upon their oath aforesaid assess the damages of the said *Charles* by him sustained by reason of that trespass to seventy pounds, over and above the costs and charges of the said *Charles* by him about his suit in this behalf expended, and for his cost and charges by him about his suit expended to forty shillings; but because the court of our said lord the King now here, is not yet advised what judgment to give of and upon the premisses, a day is therefore given to the said *Charles* before our lord the King at *Westminster*, until *Tuesday* next after the octave of the *Holy Trinity*, in the nineteenth year aforesaid, to hear judgment thereon, for that the court of our said lord the King now here is not yet advised thereof; at which day before our said lord the King at *Westminster*, the said *Charles* cometh by his attorney aforesaid, whereupon the said court
having

having seen and fully understood all and singular the premisses, it is considered that the said *Charles* do recover against the said *William* and *Richard* his said damages by the said jury in form aforesaid assessed, and also sixty eight pounds and ten shillings by the court of our said lord the King here adjudged of increase to the said *Charles* by his assent; which said damages amount in the whole to the sum of two hundred and ninety two pounds and ten shillings; it is also considered that the said *Charles* be amerced for his false claim against the said *William* and *Richard* for the said several trespasses whereof the said *William* and *Richard* are acquitted, and that they the said *William* and *Richard* go thereof without day.

A. Chambre.

Assignment
of error.

Afterwards on the day of in
the twenty first year of the reign of our lord the
now King, &c. before the justices and barons of
the said *Exchequer Chamber*, at *Westminster*, come
the said *William* and *Richard* by their attorney aforesaid, and say, that in the record and process aforesaid, and also in the rendering of the judgment aforesaid, there is manifest error, in this, That the custom contained and set forth in the issue between the said parties thirdly above joined, whereupon the said *Charles* hath recovered his damages against the said *William* and *Richard* as to the said trespass in mowing, cutting down, seizing, taking and carrying away the corn in the straw, in the fifth count of the said declaration mentioned, standing, growing and being in and upon the said close called *Hibaldstow Leys*, and converting and disposing thereof to their own use, is a custom void in law, and is contrary to, and inconsistent with the said indenture of lease in the said replication of the said *Charles* mentioned; there is also error in this, that by the record aforesaid it appears that judgment is given in form aforesaid for the said *Charles* against the said *William* and *Richard*, whereas by law it ought to have been given for the said *William* and *Richard* against the said *Charles*; and the said *William*

liam and *Richard* pray, that for these and other errors in the said record, the said judgment may be reversed, annulled and of no effect, and that they may be restored to all things which they have lost by occasion of the said judgment, and that the said *Charles* may rejoin to the said errors, &c.

W. Baldwin.

AND the said *Charles* comes voluntarily here into court here and says, that in the record and process aforesaid, or in rendering the judgment aforesaid there is not any error, and prays that the court here may proceed to the examination of the record and proceedings of the matter aforesaid above assigned for error. Rejoinder.

A. Chambre.

INDICT-

INDICTMENT.

King *versus* Kingstone.

—To wit. **B**E it remembered, that at the general quarter sessions of the peace of our lord the King, held in and for the town and county of *S.* aforesaid, at the *Guildhall* there, on *Wednesday* the seventeenth day of *July*, in the eighth year of the reign of our sovereign lord *George* the second, by the grace of God of *Great Britain, France* and *Ireland*, king, defender of the faith, and so forth, and in the year of our Lord one thousand seven hundred and thirty four, before *Arthur Bracebridge, &c.* and others their companions, justices of our sovereign lord the King assigned to keep the peace of our said sovereign lord the King within the town and county of *Southampton* aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanours committed in the said town and county, by and upon the oaths of twelve jurors, good and lawful men of the said town and county, then and there sworn and charged to enquire for our said lord the King and the body of the said town and county aforesaid, it is presented that *John Kingstone*, late of the said town and county of *Southampton*, mariner, the first day of *May*, in the seventh year of the reign of our sovereign lord *George* the second, King of *Great Britain*, and so forth, at the parish of *Holy Rood*, in the said town and county, in and upon the King's common highway there leading from a certain gate of the town of *Southampton* called *East Gate*, to a certain gate

gate of the said town called *Gadsbouse Gate*, erected and set up, and built, and caused to be erected, set up and built, one shed, one porch and thirteen feet of paling, and by the same porch and paling took in, encroached, and stopped up a certain part of the King's common highway aforesaid, containing in length seventeen feet and upwards, and in breadth two feet and upwards, and by the said shed took in, encroached and stopped up in a certain other part of the same King's common highway, containing in length eight feet and upwards, and in breadth three feet, and the same part of the said King's common highway so encroached, took in and stopped up, he the said *John* continued from the said first day of *May*, in the year aforesaid, to the day of taking this inquisition, to the great damage and common nuisance of all the liege subjects of our said lord the King, passing and labouring in, by and through the said King's highway, to the evil example of all others in the like case offending, and against the peace of our said sovereign lord the King, his crown and dignity, (*and so forth*).

INFORMATION.

Crop versus Devie.

For a chal-
lenge.

BE it remembered, that *James Burrows*, Esq; co-
roner and attorney of our present sovereign lord
the King, in the court of our now said lord the King,
before the King himself, who for our now said lord
the King in this behalf prosecuteth, in his proper
person cometh here into the court of our now said
lord the King, before the King himself, at *Westminster*,
upon *Friday* next after fifteen days from the feast day
of *St. Martin* in the same term, and for our now said
lord the King giveth the court here to understand and
be informed, that *Leonard Crop* the younger, of the
town of *Southampton* aforesaid, in the county of the
same town, merchant, being a person of a wicked
and malicious mind, and of an unruly and turbulent
disposition, and not having the fear of God before
his eyes, but being moved and seduced by the instiga-
tion of the devil, and wickedly, unlawfully, and ma-
liciously devising and intending to move, incite, in-
stigate and provoke one *Henry Devie* to fight a duel
with him the said *Leonard Crop*, and thereby to kill
and murder him the said *Henry Devie*, and to cause
him the said *Henry Devie* to break the peace of our
said lord the King, upon the twenty first day of
May, in the eighth year of the reign of our sove-
reign lord *George* the Second, by the grace of God,

of *Great Britain, France and Ireland*, King, defender of the faith, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, that is to say, at the parish of *St. Michael*, within the town of *Southampton* aforesaid, in the county of the same town, did wickedly, unlawfully, openly and maliciously challenge, and (as much as in him the said *Leonard Crop* lay) endeavour to move, incite, instigate, and provoke him the said *Henry Devie* to fight a duel with him the said *Leonard Crop* (he the said *Leonard Crop* then and there unlawfully, wickedly, maliciously and openly, and in the presence and hearing of him the said *Henry Devie*, and without any just cause or provocation whatsoever, but out of his malice aforethought speaking and uttering these hostile, threatening, challenging, and provocative words, following, that is to say, you (meaning the said *Henry Devie*) wear a sword, do you, damn you (again meaning the said *Henry Devie*) I (meaning himself the said *Leonard Crop*) have a mind to beat out your brains with this stick (meaning a certain stick which the said *Leonard Crop* had then and there in his hands) and drag you (again meaning the said *Henry Devie*) through the kennel, by means whereof he the said *Henry Devie* was then and there put under the utmost fear and apprehension of losing his life; and other mischiefs upon him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord the King, giveth the court here further to understand and be informed, that the said *Leonard Crop* being a person of a wicked and malicious mind, and of an unruly and turbulent disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly, unlawfully, and maliciously

Second
count.

maliciously devising and intending further to move, incite, instigate and provoke the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, and thereby to kill and murder him the said *Henry Devie*, and to cause him to break the peace of our now said lord the King, afterwards, that is to say, upon the said twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, to wit, at the said parish of *St. Michael*, within the said town of *Southampton*, and county of the same town, did wickedly, unlawfully, openly and maliciously challenge, and (as much as in him the said *Leonard Crop* lay) endeavour to move, incite, instigate, and provoke him the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, he the said *Leonard Crop* then and there unlawfully, wickedly, maliciously and openly, and in the presence and hearing of him the said *Henry Devie*, and without any just cause or provocation whatsoever, but out of his malice aforethought, and in an hostile, threatening, challenging, and provocative manner, speaking and uttering to the said *Henry Devie* these hostile, threatening, challenging and provocative words following, that is to say, come along, you (meaning the said *Henry Devie*) wear a sword, do you? by reason whereof he the said *Henry Devie* was then and there again put under the utmost fear and apprehension of losing his life; and other mischiefs upon him the said *Henry Devie*, he the said *Leonard Crop* did then and there by force and arms bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord the King, giveth the court here further to understand and be informed, that the said *Leonard Crop* being a person of a wicked and malicious mind, and of an unruly and turbulent disposition, and not having the fear of God before

his

his eyes, but being moved and seduced by the instigation of the devil, and wickedly, unlawfully, and maliciously devising and intending to move, incite, instigate and provoke the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, and thereby to kill and murder him the said *Henry Devie*, and to cause him the said *Henry Devie* to break the peace of our now said lord the King, afterwards, that is to say, upon the said twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton*, in the county of the same town, did again wickedly, openly and maliciously challenge, and (as much as in him the said *Leonard Crop* lay) endeavour to move, incite, instigate, and provoke him the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, he the said *Leonard Crop* then and there unlawfully, wickedly, maliciously and openly; and in the presence and hearing of him the said *Henry Devie*, and without any just cause or provocation whatsoever, but out of his malice aforethought, and in an hostile, threatening, challenging, and provocative manner, telling the said *Henry Devie*, that he (meaning him the said *Henry Devie*) wore a sword, and also then and there damning the said *Henry Devie*, and telling him that he (meaning himself the said *Leonard Crop*) had a mind to beat out his brains (meaning the brains of him the said *Henry Devie*) with a certain stick which he the said *Leonard Crop* had then and there in his hands, and drag him (again meaning the said *Henry Devie*) through the kennel, by means whereof he the said *Henry Devie* was then and there again put under the utmost fear and apprehension of losing his life, and other mischiefs upon him the said *Henry Devie*, he the said *Leonard Crop* did then and there by force and arms bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord

Fourth
count.
the

the King, giveth the court here further to understand and be informed, that the said *Leonard Crop* being a person of a wicked and malicious mind, and of an unruly and turbulent disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and further unlawfully, wickedly, and maliciously devising and intending to move, incite, instigate and provoke him the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, and thereby to kill and murder the said *Henry Devie* and to cause him the said *Henry Devie*, to break the peace of our now said lord the King, afterwards, that is say, upon the said twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, to wit, at the parish of *St. Michael*, in the said town of *Southampton*, in the county of the same town, did again wickedly, unlawfully, openly, and maliciously challenge and (as much as in him the said *Leonard Crop* lay) endeavour to move, incite, instigate and provoke him the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, by means whereof he the said *Henry Devie* was then and there again put under the utmost fear and apprehension of losing his life, and other mischiefs upon him the said *Henry Devie*, he the said *Leonard Crop* did then and there by force and arms bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord the King, giveth this court here further to understand and be informed, that the said *Leonard Crop*, in order the sooner to bring about and accomplish his said most unlawful and wicked purposes as aforesaid, afterwards, that is to say, on the twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, that is to say,

Fifth count.

say, at the said parish of *St. Michael*, within the said town of *Southampton*, and county of the same town, in and upon the said *Henry Devie*, being then and there in the peace of God, and of our now said lord the King, did unlawfully and violently make an assault and affray, and him the said *Henry Devie*, he the said *Leonard Crop* did then and there by force and arms unlawfully and violently take in his arms, and with all his force and might throw and dashed down upon and against the ground, he the said *Leonard Crop* then and there unlawfully, wickedly, maliciously and openly, and in the presence and hearing of the said *Henry Devie*, and without any just cause or provocation whatsoever, but out of his malice aforethought, speaking and uttering these hostile, threatening, challenging and provocative words following, that is to say, I will (meaning himself the said *Leonard Crop*) teach you (meaning the said *Henry Devie*) to wear a sword, which words he the said *Leonard Crop* then and there spoke and uttered as aforesaid, with a further intention to move, incite, instigate and provoke the said *Henry Devie*, to fight a duel with him the said *Leonard Crop*, in order to kill and murder him the said *Henry Devie*, and to cause him the said *Henry Devie* to break the peace of our now said lord the King; and the said coroner and attorney of our now said lord the King, for our now said lord the King, giveth the court further to understand and be informed, that the said *Henry Devie* had no sooner recovered himself from the ground on which he the said *Leonard Crop* had so thrown and dashed him the said *Henry Devie* as aforesaid, and got upon his legs, but the said *Leonard Crop* did immediately then and there by force and arms, unlawfully and violently hit and strike him the said *Henry Devie*, over the head of him the said *Henry Devie*, several grievous and violent strokes and blows with a naked sword which he the said *Leonard Crop* had then and there in his hands, whereby the said *Henry Devie* was then and there knocked down to the ground, and him the said *Henry Devie* being so knocked down to the ground as aforesaid, he the said *Leonard Crop* did then and there
injure,

there by force and arms unlawfully and violently beat and strike with his fist, and about his the said *Henry Devie's* head, breast, back, arms, shoulders, and several other parts of his body, by reason whereof he the said *Henry Devie* then and there remained and continued upon the ground for a long time, to wit, for the space of half an hour then next following and upwards, quite stupified and senseless, and as one that was almost dead, and also by means thereof he the said *Henry Devie* was then and there very much hurt and bruised in and about his head, breast, back, arms, shoulders, and several other parts of his body, and put under the utmost fear and apprehension of losing his life, and also by reason thereof he the said *Henry Devie* then and there remained and continued for a long time, to wit, for the space of six hours then next following and upwards, quite speechless, and also during that time, and for the space of ten days then next following and upwards, he the said *Henry Devie* remained and continued very ill and weak, and in a very dangerous and languishing condition, occasioned by the means aforesaid, that is to say, at the parish aforesaid, in the town and county aforesaid; and other mischiefs upon him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms unlawfully and violently bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord the King, giveth the court here further to understand and be informed, that the said *Leonard Crop*, further wickedly and maliciously devising and intending to bring about and accomplish his said most unlawful and wicked purposes as aforesaid, afterwards, that is to say, upon the twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, to wit, at the said parish of *St. Michael*, within

Sixth count.

within the said town of *Southampton*, in the county of the same town, in and upon the said *Henry Devie*, being then and there in the peace of God, and of our now said lord the King, did unlawfully and violently make an assault and affray, and him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms beat, wound and treat so ill, that his life was greatly despaired of; and also that he the said *Leonard Crop* did then and there unlawfully, wickedly, maliciously and openly, and in the presence and hearing of him the said *Henry Devie*, and without any just cause or provocation whatsoever, but out of his malice aforethought, and in an hostile threatening, challenging and provocative manner, tell him the said *Henry Devie*, that he (meaning himself the said *Leonard Crop*) would teach him (meaning him the said *Henry Devie*) to wear a sword; which said last mentioned words were then and there so spoke and uttered by him the said *Leonard Crop* to him the said *Henry Devie*, with an intention then and there to move, incite, instigate, and provoke him the said *Henry Devie* to fight a duel with him the said *Leonard Crop*, and to cause him the said *Henry Devie* to break the peace of our now said lord the King, by reason whereof he the said *Henry Devie* was also then and there again put under the utmost fear and apprehension of losing his life, and other mischiefs upon him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms unlawfully and violently bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord the King, giveth the court here further to understand and be informed that the said *Leonard Crop* being a person of a wicked and malicious mind, and of an unruly and turbulent disposition, and wickedly, unlawfully and maliciously devising and intending to beat, disquiet, injure,

Seventh
count.

injure, hurt and aggrieve the said *Henry Devie*, afterwards, that is to say, upon the twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, to wit, at the said parish of *St. Michael*, within the said town of *Southampton*, in the county of the same town, in and upon him the said *Henry Devie*, being then and there in the peace of God, and of our now said lord the King, did make an assault and affray, and him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms unlawfully and violently take in his arms, and then and there with all his force and might throw down and dash upon and against the ground, and also that he the said *Henry Devie* had no sooner recovered himself, from the ground on which he the said *Leonard Crop* had so thrown and dashed him the said *Henry Devie* as is last abovementioned, and got upon his legs, but he the said *Leonard Crop* did immediately, then and there by force and arms, unlawfully and violently hit and strike him the said *Henry Devie*, over the head of him the said *Henry Devie*, several grievous and violent strokes and blows with a naked sword, which he the said *Leonard Crop* had then and there in his hands, whereby he the said *Henry Devie* was then and there knocked down to the ground as aforesaid, he the said *Leonard Crop* did then and there by force and arms unlawfully beat and strike with his fist, in and about his the said *Devie's* head, breast, back, arms, shoulders, and several other parts of his body, by reason whereof he the said *Henry Devie* then and there remained and continued upon the ground for a long time, to wit, for the space of half an hour then next following and upwards, quite stupified and senseless, and as one that was almost dead; and also by means thereof he the said *Henry Devie* was then and there much hurt and bruised in and about his head, breast, back, arms, shoulders, and several other parts of his body, and put under the utmost fear and apprehension of losing his life; and also by reason thereof he the said *Henry Devie* then and there remained and continued

continued for a long time, to wit, for the space of six hours then next following and upwards, quite speechless; and also during that time, for the space of ten days then next following and upwards, he the said *Henry Devie* remained and continued very ill, weak, and in a very dangerous and languishing condition, occasioned by the means aforesaid, that is to say, at the parish aforesaid, in the town and county aforesaid, and during all the said time last mentioned, he the said *Henry Devie* was thereby rendered incapable of doing and transacting his necessary affairs, that is to say, at the parish aforesaid, in the town and county aforesaid, and other mischiefs upon him the said *Henry Devie* he the said *Leonard Crop* did then and there, by force and arms, unlawfully and violently bring, to the great terror and damage of him the said *Henry Devie*, in contempt of our now said lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our now said lord the King, his crown and dignity; and the said coroner and attorney of our now said lord the King, for our now said lord the King giveth the court here further to understand and be informed that the said *Leonard Crop*, afterwards, that is to say, on the said twenty first day of *May*, in the eighth year aforesaid, by force and arms, at the town of *Southampton* aforesaid, in the county of the same town, to wit, at the said parish of *St. Michael*, within the said town of *Southampton*, and county of the same town, in and upon the said *Henry Devie* did make an assault and affray, and him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms, beat, wound, and treat so ill, that his life was greatly despaired of, and other mischiefs upon him the said *Henry Devie* he the said *Leonard Crop* did then and there by force and arms bring, to the great damage of him the said *Henry Devie*, in contempt of our now said lord the King, and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our now said lord

Eighth
count.

lord the King, his crown and dignity, whereupon,
&c.

EASTER TERM, 9 GEO. II.

Eyre and Betsworth versus Atwood.

—To wit. Be it remembered, that upon the twelfth day of *May*, in the same term, comes into court here *Thomas Eyre*, &c. master of arts, and chancellor of the diocese of *Bath* and *Wells*, and vicar general, official principal, and principal commissary of the right reverend Father in God, *John*, by divine permission, bishop of *Bath* and *Wells*, in his own proper person, and gives the court here to understand and be informed, THAT WHEREAS he the said *Thomas Eyre*, at the time of the citations and several proceedings at and in the episcopal consistory court of the said bishop of *Bath* and *Wells*, and in the arches court of *Canterbury* hereinafter mentioned, and long before was, and ever since hath been, and still is vicar general, official principal, and principal commissary of the said bishop of *Bath* and *Wells*, by the said bishop duly constituted and appointed, and during all the time aforesaid hath been, and still is seized of the said offices as of his freehold for the term of his natural life; and the said *Thomas Eyre* by reason of his said office during all the time aforesaid hath had, and been intrusted with, and of right ought to have and be intrusted with, the care and charge of the ordinary jurisdiction of the said bishop of *Bath* and *Wells* in spiritualties, and by the duty of his said offices is bound to inspect and reform abuses therein, and encroachments thereupon; and also to cite into the consistory court of the said bishop of *Bath* and *Wells*, any person or persons whatsoever dwelling and inhabiting within the said diocese guilty of any abuses, infringements, or encroachments upon the said ordinary jurisdiction of the said bishop, in order to examine into, reform and amend the same;

and also by the duty of his said offices is bound to take care that due obedience is paid by the clergy of the said diocese to the canons and constitutions of the church of *England*, used, and by law established, and to cite into the said consistory court of the said bishop of *Bath and Wells* any clerk or clerks in holy orders, dwelling and inhabiting within the said diocese, guilty of any disobedience to, or neglect of the said canons and constitutions of the church of *England*, or any of them.

AND WHEREAS by a certain ecclesiastical canon and constitution of the church of *England*, made and established according to law, in the year of our Lord one thousand six hundred and three, and ever since used within this realm, reciting, THAT WHEREAS deans, archdeacons, prebendaries, parsons, vicars, and others exercising ecclesiastical jurisdiction, claimed liberty to prove the last wills and testaments of persons deceased within their several jurisdictions, having no known nor certain registers, nor public places to keep their records in, by reason whereof many wills, rights and legacies, upon the death or change of such persons, and their private notaries, miscarried and could not be found, to the great prejudice of his Majesty's subjects; it was therefore by the said canon and constitution ordered and enjoined, that all such possessors, exercisers of peculiar jurisdiction, should once in every year exhibit into the public registry of the bishop of the diocese, or of the dean and chapter, under whose jurisdiction the said peculiars were, every original testament of every person in that time deceased, and by them proved in their several peculiar jurisdictions, or a true copy of every such testament, examined, subscribed and sealed by the peculiar judge and his notary, otherwise if any of them failed so to do, the bishop of the diocese, or the dean and chapter unto whom the said jurisdiction did respectively belong, should suspend the said parties and every of them from the exercise of all such peculiar jurisdiction until they had performed the said constitution, as by the said constitution

DECLARATIONS, PLEADINGS, &c.

constitution and canon, still remaining in full force and virtue, fully and at large appears.

AND WHEREAS the archdeaconry of *Taunton*, in the county of *Somerset*, and also the prebendal peculiar of the parish and parish church of *Milverton*, in the same county, are, and each of them is, and during all the time aforesaid and long before have been, and each of them hath been within the diocese of *Bath and Wells*; and the archdeacon of the said archdeaconry, and the prebend of the said prebendal peculiar for the time being, during all the time aforesaid have been, and are and each of them hath been, and still is within, under and subject to the ordinary jurisdiction of the said bishop of *Bath and Wells*.

AND WHEREAS *George Atwood*, bachelor in divinity, at the time of issuing the citation herein after mentioned, to wit, upon the fifteenth day of *June* one thousand seven hundred and thirty four, and for three years then last past was, and ever since hath been, and still is archdeacon of the archdeaconry of *Taunton* aforesaid, and also prebend of the said prebendal peculiar; and the said *George Atwood* being so archdeacon as aforesaid, from time to time during all the said three years claimed to himself, and exercised within the archdeaconry of *Taunton* aforesaid, a peculiar jurisdiction of proving testaments of persons dying within the said archdeaconry, and proved several such testaments, and particularly within one year then last past, and did not exhibit nor transmit the original testaments so proved before him, nor any copies of them, into the registry of the said bishop of *Bath and Wells*, according to the directions of the said canon; and the said *George Atwood* being archdeacon as aforesaid, from time to time during the said three years, granted letters of administration of the goods of persons dying intestate within the said archdeaconry of *Taunton*, without any lawful authority from the said bishop of *Bath and Wells*, ordinary of the place, or otherwise howsoever for so doing, in violation of the ordinary jurisdiction of the said bishop; and also the said *George Atwood*, being so archdeacon of the archdeaconry of *Taunton* aforesaid, and also prebend of the

the said prebendal peculiar of *Milverton* as aforesaid, from time to time during the said three years, without any right or authority whatsoever, granted marriage licences, or dispensations for persons to marry without publication of banns within the said prebendal peculiar of *Milverton*, in the said diocese of *Bath and Wells*, in violation of the ordinary jurisdiction of the said bishop of *Bath and Wells*, whereupon the said *Thomas Eyre*, vicar general, official and commissary of the said bishop of *Bath and Wells* as aforesaid, afterwards, to wit, upon the said fifteenth day of *June*, in the said year one thousand seven hundred and thirty four, at *Taunton* aforesaid, within the said diocese, of his mere office, and as he was bound by the duty of his said office to do, caused the said *George Atwood* to be cited before the said Father in God, *John*, by divine permission then bishop of *Bath and Wells*, or his lordship's vicar general and official principal, his surrogate, or lawful deputy, or some other competent judge in that behalf, in the cathedral church of *Wells* aforesaid, at the episcopal consistory court there, on *Tuesday* the twenty fifth day of *June*, in the said year one thousand seven hundred and thirty four, between the hours of nine and eleven of the clock in the forenoon of the same day, to set forth by what right or authority he the said *George Atwood* granted administration within the archdeaconry of *Taunton* aforesaid, or marriage licences within the prebendal peculiar of *Milverton*, and to shew cause why he should not be suspended from the exercise of the peculiar jurisdiction of proving wills within the archdeaconry of *Taunton* aforesaid, for not exhibiting the original testaments or authentic copies thereof by him proved within the said archdeaconry, into the registry of the said bishop of *Bath and Wells*, according to the ecclesiastical laws in that behalf provided, and further to do and receive as to law and justice should appertain; and the said *George Atwood*, in obedience to the said citation, did appear on the aforesaid day, time and place, before the said *Thomas Eyre*, &c. master of arts, then being vicar general and official principal of

of the said bishop of *Bath* and *Wells* as aforesaid; and thereupon the said *Thomas Eyre*, the said vicar general and official principal, then and there objected unto the said *George Atwood* the said archdeacon, that he the said *George Atwood* had exercised, or pretended to exercise archdeaconal jurisdiction within the said archdeaconry of *Taunton* aforesaid, and by virtue or under colour thereof had proved and made out pretended probats of several original last wills and testaments of persons dying within the said archdeaconry, and particularly within a year then last past, and had not exhibited or transmitted the said original wills or testaments, or any copies thereof, into the registry of the bishop of *Bath* and *Wells* or his chancellor, according to the canons and other ecclesiastical laws in that behalf provided; and it was also further objected to him by the said vicar general and official principal, that he the said *George Atwood* had granted letters of administration of the goods of persons dying intestate within the said archdeaconry of *Taunton*, under the seal of his pretended court, without any authority from the bishop of *Bath* and *Wells* aforesaid, ordinary of the place, or otherwise howsoever, in violation of the ordinary jurisdiction of the said bishop; and it was also then and there further objected to him by the said vicar general and official principal, that he the said *George Atwood* had granted several dispensations, or licences for persons to marry without publication of banns within the pretended peculiar of *Milverton*, in the said diocese of *Bath* and *Wells*, without any authority in that behalf; and the said judge then and there required and enjoined the said *George Atwood* to make answer to the matter and fact so respectively objected to him, and to shew good and sufficient cause, if he had or knew any, why he should not be suspended for not exhibiting or transmitting into the registry of the bishop of *Bath* and *Wells*, according to the canons and ecclesiastical laws in that behalf provided, the said original wills by him the said *George Atwood* proved as aforesaid, or true and authentic copies thereof; and also to shew
by

by what authority he had or could grant letters of administration within the said archdeaconry of *Taunton*, or dispensations or licences for marriage without banns, within the said prebendal peculiar of *Milverton*; and thereupon the said archdeacon then and there in no wise denying that he had proved and granted probats of wills within the said archdeaconry, or that he had not transmitted or exhibited the same, or any copies thereof into the registry of the said bishop or his chancellor, or that he had granted several licences within the said prebendal peculiar of *Milverton*, or that he had granted several letters of administration of persons dying intestate within the said archdeaconry of *Taunton*, he the said archdeacon made protestation of not submitting to the authority or jurisdiction of the said judge, farther or otherwise than as by law he was obliged, and alledged, that as archdeacon of *Taunton* he was in possession of a legal, ancient, and well founded right, to grant letters of administration within his archdeaconry, and marriage licences within the prebendal peculiar jurisdiction of *Milverton*, and that such his right was well established, and was always exercised by him and his predecessors for time immemorial, and that the said judge had not a power to determine the jurisdiction of the archdeacon of *Taunton*, nor to proceed in the manner he had done; and he did also alledge, that he had a known and certain register who held his office by patent, and that such patent was confirmed by the bishop and dean and chapter, and that his said register had a public place to keep the records of his office, and therefore he the said archdeacon or his register were not obliged to exhibit original testaments, or authentic copies into the said bishop's registry, and therefore he prayed to be dismissed from that process with his costs of suit, and then and there refused to give any other answer; upon which the said judge then and there admonished him the said archdeacon to appear the then next day in the same consistory court, between the hours of eleven and one of the clock of the same day,

then and there to hear what should be further objected to him, and to do and receive as to law and justice should appertain, and more particularly to see himself suspended from all peculiar jurisdiction of proving wills within the archdeaconry of *Taunton*, till such time as he should comply with the one hundred and twenty sixth constitution of the canons of one thousand six hundred and three, by exhibiting into the bishop's registry the original testaments by him proved, or true copies of them; furthermore the said judge then thrice called upon and admonished the said archdeacon in open court to bring in and exhibit into the bishop's registry the original testaments or authentic copies thereof, pursuant to the said constitution, which the said archdeacon then and there refused to do, and so declared for the reasons before by him given, whereupon the said judge pronounced the said archdeacon contumacious and (in pain of his contumacy) decreed him the said archdeacon to be suspended from the exercise of his jurisdiction of proving wills within the said archdeaconry of *Taunton*, until he had performed the said canon or constitution; the said archdeacon then and there protesting of a grievance, and of appealing to the arches court of *Canterbury*, and the official principal of the same; and then the said judge adjourned the said court to the then next day, being *Wednesday* the twenty sixth day of *June*, in the same place, between the hours of eleven and one of the same day, having first admonished the said archdeacon then and there to appear as aforesaid—*(then follows the sitting of the court on the twenty sixth day of June, and for default of the archdeacon's appearance, a revocation of the above suspension, and a declaration of contumacy, and a sentence of excommunication; and that such excommunication should not pass under seal of that court until Tuesday the second day of July then next);* and thereupon afterwards, to wit, the sixth day of *August*, in the said year one thousand seven hundred and thirty four, a schedule of excommunication was read in the consistory court of the said bishop against the said *George*

Atwood

Atwood, and the said excommunication was then and there by the same court decreed to go under seal and be published in the parish church of *St. Mary Magdalen*, in *Taunton*; and also a sequestration of the said *George Atwood's* cures of *St. James*, in *Taunton*; and *Hull*, was decreed by the said court to be made out under seal to the church-wardens of the same parishes respectively.

AND WHEREAS all and singular pleas and cognizance of pleas of and concerning customs, usages, and prescriptions, time out of mind used and approved in any places within this realm, and also of and concerning the right or title to any estate, or office or offices of freehold within this realm, and also of and concerning the bounds, limits and extents of dioceses, and all ordinary jurisdictions of bishops of this realm, and of all subordinate jurisdictions within or subject to the ordinary jurisdictions of such bishops, and of all exempt jurisdictions whatsoever, and also of and concerning all deeds, patents, and grants of freeholds and of offices, and the construction of the same within this realm, more especially belong and appertain to our sovereign lord the King and his royal crown, and of right ought to be, and have always hitherto been accustomed to be tried, discussed and determined by the common law of this realm, and in the courts of record of our said lord the King, and not in court christian, nor by ecclesiastical laws or censures.

AND WHEREAS the several matters and things herein before mentioned, have been by the said *George Atwood* pretended and alledged in his defence in the said consistory court of the said bishop of *Bath and Wells* are all of them matter of prescription and usage, time out of mind, and of right and title to freeholds and interests therein, and of grants and the validity and construction thereof, and of the extent of the ordinary jurisdiction of the said bishop, and his vicar general and official principal, and all of them, of temporal cognizance; and the said *George Atwood* ought to have applied to and sought redress (if he were aggrieved

DECLARATIONS, PLEADINGS, &c.

grieved in any thing relating to the same) to the courts of record of our said lord the King, in order to have had the same tried, discussed and determined, in the same court of records, some or one of them; yet the said *George Atwood* well knowing the premises, and not weighing the laws of this realm, but purposing to violate them, and maliciously intending to injure, oppress and harass the said *Thomas Eyre*, contrary to the laws and statutes of this realm, and to draw cognizance of pleas which more especially belong to the said lord the King and his royal crown, into a foreign examination in the court christian, upon the twenty ninth day of *June*, in the said year one thousand seven hundred and thirty four, caused an appeal from the said consistory court of the said bishop of *Bath and Wells*, to be exhibited to the arches court of *Canterbury*, to the right worshipful the official principal thereof, or to any other competent judge before whom the said cause should happen to be heard, cautiously and subtilly in and by his said appeal alledging, propounding and setting forth, that he the said *George Atwood*, bachelor of divinity, archdeacon of *Taunton*, in the county of *Somerset*, and diocese of *Bath and Wells*, having been cited to appear before the right reverend Father in God, *John*, by divine permission bishop of *Bath and Wells*, or his lordship's vicar general and official principal, his surrogate or lawful deputy, or some other competent judge in that behalf, in the cathedral church of *Wells* aforesaid, at the episcopal consistory court, on *Tuesday* the twenty fifth day of *June*, in the said year one thousand seven hundred and thirty four, between the hours of nine and eleven of the clock in the forenoon of the same day, to set forth and shew by what right or authority he granted administrations within the archdeaconry of *Taunton* aforesaid, or marriage licences within the prebendal peculiar of *Milverton*, and to shew cause why he should not be suspended from the exercise of the peculiar jurisdiction of proving wills within the *&c. &c.*

PLEAS.

P L E A S.

HILARY TERM, 9 GEO. II.

Parker *versus* Dennis.

AND the said *Henry*, by *Giles Taylor* his attorney, Plea of seisin in fee. comes and defends the force and injury, when, &c. and as to the coming with force and arms, and every thing that is against the peace of his present Majesty, and also as to all the trespasss aforesaid, except the breaking and entering the said dwelling house, and taking and carrying away the said good and chattels in the said declaration abovementioned and supposed to be done by the said *Henry*, he the said *Henry* saith that he is in no wise guilty thereof, as the said *Mary Dennis* above thereof complains against him, and of this he puts himself upon his country, and the said *Mary Dennis* likewise; and as to the breaking and entering the said dwelling house, and taking and carrying away the said goods and chattels in the said declaration abovementioned and supposed to be done by the said *Henry*, he the said *Henry* saith that the said *Mary* ought not to have or maintain her said action against him for the same, because he saith that long before the said time when the said trespasss is above supposed to have been done by the said *Henry*, and also at the said time, when, &c. he the said *Henry* was and still is seised of and in the said dwelling house, in which, &c. in his demesne as of fee; and being so seised thereof, he the said *Henry* afterwards, to wit, upon the twenty fifth day of *March*, in the year of our Lord one thousand seven hun-

hundred and thirty four, at *Richmond* aforesaid, demised the aforesaid messuage, with the appurtenances, in which, &c. unto the said *Mary Dennis*, to have and to hold the same messuage, with the appurtenances, in which, &c. to the said *Mary*, from thence as long as the said *Henry* and the said *Mary* should please, yielding and paying therefore, and yearly during the continuance of the said demise, unto the said *Henry*, the yearly rent of nine pounds, at the four most usual feasts or days of payment in the year, that is to say, the feast of *St. John the Baptist*, the feast of *St. Michael*, the feast of the *Birth of our Lord*, and the *Annunciation of the Blessed Virgin Mary*, by even and equal portions; by virtue of which said demise, the said *Mary*, afterwards, and before the said time, when, &c. to wit, upon the twenty sixth day of *March*, in the year of our Lord one thousand seven hundred and thirty six, entered into the said dwelling house with the appurtenances, in which, &c. and was possessed thereof from thence until and at the said time, when, &c. and the said *Mary* being so possessed thereof, nine pounds of the rent aforesaid due and payable to the said *Henry* for one year, ended upon the feast of the *Annunciation of the Blessed Virgin Mary*, in the said year of our Lord one thousand seven hundred and thirty five, was at the said feast, and also at the said time, when, &c. in arrear and unpaid to the said *Henry*, for which cause the said *Henry*, upon the said fourteenth day of *June*, in the year of our Lord one thousand seven hundred and thirty five, entered into the said dwelling house, in which, &c. the door thereof then being open, in order to distrain for the rent so due and in arrear to the said *Henry* as aforesaid, and then and there took and carried away the said goods and chattels in the said declaration abovementioned, then being in the said dwelling house, in which, &c. for and in the name of a distress for the said rent so due and in arrear to the said *Henry* as aforesaid, and impounded them at *Richmond* aforesaid, as it was lawful for him to do, which is the same breaking and entering the said dwelling house, and taking and carrying away the said goods and chattels in the said declaration

claration abovementioned, whereof the said *Mary* above complains against him, and this he is ready to verify; wherefore he prays judgment if the said *Mary Dennis* ought to have or maintain her said action against him for the same.

R. Draper.

AND the said *F.* by *A. B.* his attorney, comes and defends the force and injury, when, &c. and saith that the said *T.* ought not to have his action against him, because he saith that as to the coming with force and arms he is not thereof guilty, and of this, &c. and as to the residue of the said trespass and assault the said *F.* saith that the aforesaid *T.* the day and year aforesaid, in the county aforesaid, made an assault upon him the said *F.* and would have beaten, wounded, and evilly intreated him the said *F.* wherefore he the said *F.* then and there defended himself against the said *T.* and if any damage or hurt then there happened to the said *T.* it was by reason of the assault of him the said *T.* and this he is ready to verify, wherefore he prayeth judgment whether the said *T.* ought to have his said action therefore against him.

*Sen assault
demejne.*

AND the said *T.* saith, that he for any thing before alledged, ought not to be precluded from having his aforesaid action against the said *F.* because he saith that the aforesaid *F.* on the day and year, &c. aforesaid, with the force and arms aforesaid, of his own wrong, and without the cause by the same *F.* above alledged in his plea in and upon the said *T.* at *N.* aforesaid, in the county aforesaid, made an assault, and him the said *T.* beat, wounded and evilly treated, in manner and form as the aforesaid *T.* above against him hath complained, and this he prays may be inquired into by the country, and the said *F.* does the like; therefore, &c.

Replication.

HILARY

HILARY TERM, 10 GEO. II.

Stone versus Williams.

Tender.

AND the said *George*, by *A. B.* his attorney, comes and defends the wrong and injury, when, &c. and as to the two last promises and undertakings in the said declaration mentioned, and also as to three pounds fourteen shillings, part of the said four pounds nine shillings and six pence mentioned in the first promise and undertaking in the aforesaid declaration specified, saith that he did not take upon himself and promise in manner and form as the said *Stephen* above thereof complains against him, and of this he puts himself upon the county, and *Stephen* also; and as to fifteen shillings and sixpence, residue of the aforesaid four pounds nine shillings and sixpence, in the said first promise and undertaking mentioned, he the said *George* saith that the aforesaid *Stephen* ought not to recover any damages against him for the not paying thereof, because he saith that he the said *George*, after the making the said promise and undertaking as to the said fifteen shillings and sixpence, and before the day of exhibiting the said bill of the said *Stephen* against him, to wit, on the first day of *May*, in the year of our Lord one thousand seven hundred and thirty six, at *Bridford* aforesaid, was ready and offered to pay to him the said *Stephen* the said fifteen shillings and six pence so tendered as aforesaid to the said *Stephen*, the said *Stephen* then and there refused to accept of him the said *George*; and the said *George* further saith, that he hath always from the time of making the said first promise and undertaking as to the said fifteen shillings and six pence hitherto been ready and willing, and yet is ready and willing, to pay to the said *Stephen* the said fifteen shillings and six pence, and now brings the same here into court ready to be paid to the said *Stephen* if he will accept the same of the said *George*, and this he is ready to verify; wherefore he prays judgment if the said *Stephen* ought to recover any further damages against him

him by reason of the not paying the said fifteen shillings and six pence, &c.

R. Gundry.

WHEREUPON the said *Stephen* here in court received of the said *George* the said fifteen shillings and six pence, therefore let the said *George* be thereof acquitted; and to try the said issue above joined between the said parties, let the jury, &c.

This issue is rightly joined, and the judgment for the money is right.

R. Draper.

N. B. *Assumpsit for goods sold and delivered, quantum meruit, and infimul comp. for four pounds nine shillings and six pence.*

TRINITY TERM, 10 GEO. II.

Shesham versus Glead.

—To wit. AND the said *Philip*, by *A. B.* his Payments attorney, comes and defends the wrong and injury, when, &c. and saith that the said *Richard* ought not to have his said action against him, because he says that he the said *Philip* well and truly paid to the said *Richard* the sum of twenty five pounds, being one half of the said fifty pounds in the articles mentioned, when one side of the said work in the said articles mentioned was finished, to wit, upon the sixth day of *August*, in the said year of our Lord one thousand seven hundred and thirty five, at *Hamworthy* afore-said; and the said *Philip* further saith that one work of the said articles mentioned hath not been nor yet finished by the said *Richard*, for which reason the said *Philip* hath not yet paid to the said *Richard* the remainder of the said fifty pounds, nor any part thereof, and this he is ready to verify; wherefore he prays judgment if the said *Richard* ought to have his said action against him.

R. Draper.

Sudel

Sudel *versus* Lyford.*Infra acta-
tem.*

—To wit. AND the said *Richard Sudel*, by C. S. his guardian, comes and defends the wrong and injury, when, &c. and says that the said *Richard Lyford* ought not to have or maintain his said action against him, because he says that at the time of the making the said several promises and undertakings in the said declaration mentioned, he the said *Richard Sudel* was under the age of one and twenty years, to wit, of the age of sixteen years, at *Westminster* aforesaid, and this he is ready to verify; wherefore he prays judgment if the said *Richard Lyford* ought to have or maintain his said action against him.

R. D.

Usury to an
action on
bond.

AND the said *A. B.* by *C. D.* his attorney, comes and defends the force and injury, when, &c. and prays *Oyer* of the said writing, and it is read to him, &c. he likewise prays *Oyer* of the condition of the said writing, and it is read to him in these words (*recite the condition*); which being read and heard, the said *A.* saith that he ought not to be charged with the said debt by virtue of the said writing, because he saith that after the twenty ninth day of *September*, and before the making thereof, to wit, on the said eighth day of *May*, in the said first year of the reign of the present King, at *London*, in the parish and ward aforesaid, it was corruptly agreed between the said *A. B.* and the said *E. F.* that the said *E.* should lend unto the said *A.* the sum of two hundred and forty pounds, and should forbear and give day to the said *A.* for the repayment thereof, until the eighth day of *May* then next ensuing, and that the said *A.* for the loan of the said sum of two hundred and forty pounds, and for the forbearance of the payment thereof for the time last mentioned, should pay to the said *E.* the sum of twenty pounds, together with interest for the entire sum of two hundred and forty pounds; and that for securing pay-

ment

ment as well of the said two hundred and forty pounds, as of the said twenty pounds, with interest as aforesaid, the said *A.* should then and there become bound to the said *E.* by writing obligatory, in the penal sum of five hundred and twenty pounds, with a condition thereunder written for the payment of two hundred and sixty pounds by the said *A.* to the said *E.* on the eighth day of *May* then next ensuing, with lawful interest for the same, after the rate of five pounds for one hundred pounds for a year; and the said *A.* further saith, that in pursuance and performance of the said corrupt agreement, the said *E. F.* afterwards, to wit, on the said eighth day of *May*, in the said first year of the reign of the said King, at *London*, in the parish and ward aforesaid, lent to the said *A.* the said sum of two hundred and forty pounds, and gave him day for the repayment thereof until the eighth day of *May* then next following; and for securing the payment as well of the said two hundred and forty pounds as of the said twenty pounds, with interest for forbearance as aforesaid, the said *A.* by the writing brought into court then and there became bound to the said *E.* in the said sum of five hundred and twenty pounds, with the said condition abovementioned; and the said *A.* further saith that the said sum of twhty pounds, and interest for the whole sum of two hundred and sixty pounds for forbearance, and giving day of payment of the said sum of two hundred and forty pounds for the time abovementioned, exceeds the rate of five pounds for one hundred pounds for a year; whereby, and by force of the statute in that case made and provided, the said writing is void and of no effect in law, and this he is ready to verify; wherefore he prays judgment if he ought to be charged with the said debt, by virtue of the writing aforesaid, &c.

G. Eyre.

AND the said *R.* by *J. S.* his attorney, comes and defends the force and injury, and the damages, and all that he ought to defend, when and where he ought; and says that the said *T. H.* ought not to have

*Non accrevit
actio infra
sex annos.*

have his said action against him, because he says the several causes of action did not accrue, nor did any of them accrue to the said *T. H.* within six years next before the day of the obtaining of the original writ of him the said *T. H.* and this he is ready to aver; whereupon he prays judgment if the said *T. H.* ought to have his said action against him for the same.

Replication.

AND the aforesaid *T. H.* says, that he by any thing alledged ought not to be debarred from having his action aforesaid against him the said *R.* because he says that the several causes of action did accrue to the said *T. H.* within six years next before the day of the obtaining of the original writ of him the said *T. H.* to wit, the aforesaid first day of *May*, in the year of our Lord one thousand seven hundred and twenty nine aforesaid, at the parish of *W.* aforesaid, and this he desires may be enquired of by the country, and the aforesaid *R.* likewise.

Durefs of imprisonment to a bond.

AND the said *T. H.* by *A. B.* his attorney, comes and defends the force and injury, when, &c. and saith that the said *J. D.* ought not to have or maintain his said action against him, because he saith that at the time of making the writing aforesaid he was imprisoned by the said *J. D.* and others, by his contrivance, to wit, at *W.* aforesaid, in the county aforesaid, and was there detained in prison until he the said *T. H.* by force of durefs and imprisonment, then and there made the said writing to the aforesaid *J. D.* and this he is ready to verify; wherefore he prays judgment if the said *J. D.* ought to have or maintain his said action against him

Misnomer.

AND Sir *Thomas Samwell*, Bart. who is impleaded by the name of Sir *Thomas Samuel*, Bart. in his proper person comes and defends the force and injury when, &c. and saith that he now is and always was called and known by the surname of *Samwell*, and not *Samuel*, as by the said writ and declaration is

above

bove supposed, and this he is ready to verify ; wherefore he prays judgment of the said writ, and that the said writ may be quashed.

AND the aforesaid *J.* by *G. H.* his attorney, comes Tender. and defends the force and injury, when, &c. and as to the first, third, fourth and fifth promise and assumption aforesaid, above in the declaration aforesaid mentioned, and by him the said *J.* above supposed to be made, saith that he did not assume upon himself in manner and form as the said *John* in his declaration aforesaid above complains against him, and of this he puts himself upon the country, and the said *John* doth the like, &c. and as to the second promise and assumption aforesaid in the declaration aforesaid mentioned, the same *Joseph* saith that the aforesaid *John* ought not to have his action aforesaid thereof against him the said *Joseph*, because he saith that true it is that the said *Joseph* assumed upon himself in the manner and form as the aforesaid *John* has above against him thereof declared for plea ; nevertheless the same *Joseph* saith that the meat, drink and lodging in the same second promise and assumption mentioned, were worth one pound fourteen shillings of lawful money of this kingdom, and no more, to wit, at *P.* aforesaid ; and the aforesaid *Joseph* further saith, that after the making the aforesaid second promise and assumption in the declaration mentioned, and before the day of obtaining the original writ of him the said *John*, to wit, on the ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty two aforesaid, he the said *Joseph*, in *P.* aforesaid, offered to pay to the same *John* the aforesaid sum of one pound fourteen shillings for the same meat, drink and lodging in the same second promise and assumption mentioned, and that he the said *John* then and there refused to receive of the same *Joseph* the said sum of one pound fourteen shillings ; and the said *Joseph* in fact further saith, that he was always from the time of making the same second promise and assumption to this time, ready, and yet is ready

ready to pay the same *John* the said sum of one pound fourteen shillings, for the meat, drink and lodging aforefaid, in the same second promise and assumption mentioned, and the said *Joseph* bringeth here into court the said sum of one pound fourteen shillings, to pay to the same *John*, if the said *John* be willing to accept the same, and this he is ready to verify; whereupon he prayeth judgment if the aforefaid *John*, as to the second promise and assumption aforefaid, ought to have his action aforefaid against him the said *Joseph*, &c.

Replication.

AND the aforefaid *John*, as to the said plea of the said *Joseph*, as to the second promise and assumption aforefaid in the declaration aforefaid mentioned, above pleaded in bar, saith that he by any thing in the aforefaid plea alledged, ought not to be barred from having his aforefaid action thereupon against him the said *Joseph*, because he saith that the said meat, drink and lodging, in the same second promise and assumption mentioned, were worth more than the sum of one pound fourteen shillings of lawful money of this kingdom, namely, the said meat, drink and lodging, were reasonably worth one hundred shillings of like lawful money, to wit, at *P.* aforefaid, in manner and form as in the said declaration is alledged; and this he prays may be enquired.

QUI TAM

MICHAELMAS TERM 9 Geo. II.

Carter *versus* Hampton.

—To wit. **J**OHNN CARTER, who as well for himself as for the poor of the parish of *Draxford*, in the county aforesaid, in this behalf prosecutes, complains of *James Hampton*, in the custody of the marshal, &c. in a plea that he render to him the said *John Carter*, who as well, &c. sixty pounds of lawful money of *Great Britain*, which he owes to the said *John*, who as well, &c. and unjustly detains, for this, THAT the said *James* after the end of the term of the *Holy Trinity* last past, to wit, upon the first day of *September*, in the year of our Lord one thousand seven hundred and thirty five, at the parish of *Draxford* aforesaid, in the county aforesaid, exposed to sale five hares, against the form of the statute in such like cases being lately made and provided (the said *James* by force of the statutes of this realm then and there not being qualified in his own right to kill game, nor being entitled to the same hares, nor to any of them, under any person qualified to kill game) whereby, and by force of the statutes in such case made and provided, the said *James* hath forfeited twenty five pounds, to wit, five pounds for each of the said hares, one moiety thereof to the said *John Carter* the informer, and the other moiety thereof to the poor of the said parish, whereby an action accrued to the said *John Carter*,

An action on the game act, for selling game.

Carter, who as well, &c. to demand and have of the said *James* twenty five pounds, parcel of the said sixty pounds; and that the said *James* after the end of the said term of the *Holy Trinity* last past, to wit, upon the same day and year abovementioned, at the parish aforesaid, in the county aforesaid, exposed to sale five partridges, against the form of the statute in such like cases lately made and provided (the said *James* by force of the statutes of this realm then and there not being qualified in his own right to kill game, nor being entitled to the same partridges, nor to any of them, under any person qualified to kill game) whereby, and by force of the statutes in such case made and provided, the said *James* hath forfeited other twenty five pounds, to wit, five pounds for each of the said partridges, one moiety thereof to the said *John Carter* the informer, and the other moiety thereof to the poor of the said parish, whereby an action accrued to the said *John Carter*, who as well, &c. to demand and have of the said *James* the said sum of twenty five pounds last abovementioned, other parcel of the said sixty pounds; and that the said *James Hampton*, after the end of the said term of the *Holy Trinity* last past, to wit, upon the same day and year abovementioned, at the parish aforesaid, in the county aforesaid, did keep and use an engine called a gun to kill and destroy game, against the form of the statute in such case lately made and provided (the said *James* by force of the statutes of this realm in such cases lately made and provided not being qualified so to do) whereby, and by force of the statutes in such case made and provided, the said *James* hath forfeited five pounds, one moiety thereof to the said *John Carter* the informer, and the other moiety thereof to the poor of the said parish, whereby an action accrued to the said *John Carter*, who as well, &c. to demand and have of the said *James* the said five pounds, other parcel of the said sixty pounds; and that the said *James* afterwards, and after the end of the said term of the *Holy Trinity* last past, to wit, upon the same day and year abovementioned, at the parish aforesaid, in the county aforesaid, did keep and use a dog to kill and destroy game, against the

form of the statute in such case lately made and provided (the said *James* by force of the statutes of this realm in such case lately made and provided not being qualified so to do) whereby, and by force of the statutes in such case made and provided, the said *James* forfeited other five pounds, one moiety thereof to the said *Carter* the informer, and the other moiety thereof to the poor of the said parish, whereby an action accrued to the said *John Carter*, who as well, &c. to demand and have of the said *James* the said five pounds last mentioned, residue of the said sixty pounds; yet the said *James* (although requested) hath not paid to the said *John Carter*, who as well, &c. the said sum of sixty pounds, but hath hitherto altogether refused, and still doth refuse to pay the same to him, whereby the said *John Carter*, who as well, &c. saith that he is prejudiced, and hath damage to the value of forty pounds; and thereupon the said *John Carter*, who as well, &c. brings his suit, &c.

R. Draper.

—To wit. The inhabitants in the hundred of *Ongar*, in the county aforesaid, were attached to answer as well to our lord the King as to *John Warner* in a plea, wherefore when certain malefactors unknown to the said *John*, in the King's highway in *Epping Forest*, in the said hundred of *Ongar*, in the county aforesaid, with force and arms made an assault upon the said *John*, and the monies of the said *John* to the value of two hundred and seventeen pounds there found, from the said *John* feloniously took and carried away, against the peace of the said lord the King; and the said *John*, immediately after the said felony and robbery committed at *Epping* in the county aforesaid, near the said place where the said felony and robbery was committed, made hue and cry of the said robbery, and gave notice and intelligence thereof to the inhabitants of the village of *Epping* aforesaid, and also with as much convenient speed as he could after the said robbery com-

Declaration
on the sta-
tute of hue
and cry.

G g

mitted

The direc-
tions of the
statute.

mitted at *Epping* aforesaid, gave notice thereof to *Samuel Allis*, then one of the constables of the hundred of *Ongar* aforesaid, and in the said notice to the constables so given, described so far as the nature and circumstances of the said case did admit, the said felony, and the time and place of the said robbery, and also within the space of twenty days next after the said robbery committed, caused public notice to be given thereof in the *London Gazette*, and therein likewise described as far as the nature and circumstances of the said case did admit, the said felons, and the time and place of the said robbery, together with the goods and effects whereof the said *John* was robbed; and afterwards the said *John*, at *Epping* aforesaid, went before *Samuel Clerke, Esq;* secondary to *Edward Ventris, Esq;* C. C. of the lord the King assigned to inroll pleas in the said court of our said lord the King before the King himself, and then and there before the said secondary, according to the direction of the statute in such cases lately made and provided, entered into a bond to *John Butler*, high constable of the hundred of *Ongar* aforesaid, in the penal sum of one hundred pounds, with two sufficient sureties, viz. *John Kingman* and *John Mars*, approved by the said secondary, with condition for securing to the high constable the due payment of his costs after the same should be taxed by the proper officer, in case that the said *John Warner* should happen to be nonsuited, or should discontinue his action, in this behalf, or in case, that judgment should be thereon given against the said *John Warner* on demurrer, or that a verdict should be given against him thereon, according to the direction of the statute in such case lately made and provided; and the said *John Warner* after the said felony and robbery committed, and within twenty days next before the issuing of the original writ of him the said *John Warner*, at *Epping* aforesaid, was examined upon his corporal oath before *John Clevely, Esq;* then one of the justices of our now said lord the King assigned to keep the peace in the county aforesaid inhabiting within the said hundred, according to the form of the statute of the twenty seventh year of the reign of our lady *Elizabeth*, late Queen of *England*, in such cases made and provided:

provided; and the said *John Warner* upon his said oath then said, that he did not know the parties who committed the said robbery, nor either of them, and forty days were past after the said robbery committed and the said public notice given thereof in the said *London Gazette*, and before the issuing of the said original writ, yet the said inhabitants in the said hundred have not hitherto made amends to the said *John Warner* for the said robbery, nor have taken the bodies of the said felons and malefactors, nor the body of either of them, nor have they hitherto answered for the bodies of them, nor the body of either of them, but have suffered the said felons and malefactors to escape, in contempt of our said lord the King, and to the great damage of the said *John Warner*, and against the form of the statute in such cases lately made and provided; and whereupon the said *John Warner*, who prosecutes as well for the said lord the King as for himself in this behalf, by *G. F.* his attorney, complains, THAT WHEREAS certain malefactors, to wit, two men unknown to the said *John*, upon the fifteenth day of *August*, in the eleventh year of King *George* the second, in the said King's highway in *Epping Forest*, in the said hundred of *Ongar*, in the county aforesaid, with force and arms, viz. with staves, swords and pistols, made an assault upon him the said *John Warner*, and the monies of the said *John Warner* to the value of two hundred and seventeen pounds then found, there from the said *John Warner* feloniously took and carried away, against the peace of our said lord the King; and the said *John* immediately after the said felony and robbery committed made hue and cry of the said robbery, and then and there gave notice and intelligence thereof to the inhabitants of the village of *Epping* aforesaid, and also with as much convenient speed as he could after the said robbery committed, to wit, upon the same day and year, at *Epping* aforesaid, gave notice thereof to the said *Samuel Allis*, then one of the constables of the said hundred of *Ongar* aforesaid, and in the said notice so given to the said constable, described, so far as the nature and circumstances of the case did admit, the said felony,

and the time and place of the said robbery; and also within the space of twenty days next after the said robbery committed, to wit, upon the twenty sixth day of *August*, in the same year, at *Epping* aforesaid, caused public notice to be given thereof in the *London Gazette*, and therein likewise described, as far as the nature and circumstances of the case did admit, the said felons, and the time and place of the said robbery, together with the goods and effects whereof the said *John* was robbed; and afterwards, to wit, upon the third day of *November*, in the same year, the said *John*, at *Epping*, aforesaid, went before the said *Samuel Clerke*, Esq; then secondary to *Edward Ventris*, Esq; C. C. of the said lord the King, assigned to enroll pleas in the court of our said lord the King, before the King himself, and then and there before the said secondary, according to the directions of the statute in such case lately made and provided, entered into a bond to *J. B.* then high constable of the hundred of *Ongar* aforesaid, in the penal sum of one hundred pounds, with two sufficient sureties, viz. *J. K.* and *J. M.* then and there appointed by the said secondary, with condition for securing to the said high constable the due payment of his costs after the same should be taxed by the proper officer, in case that the said *John Warner* should happen to be nonsuited, or should discontinue his action in this behalf, or in case that judgment should be thereon given against the said *John Warner* on demurrer, or that a verdict should be given against him thereon, according to the directions of the statute in such case lately made and provided; and the said *John Warner* after the said felony and robbery committed, and within twenty days next before the issuing the said original writ of him the said *John Warner*, to wit, upon the twenty seventh day of *October*, in the same year, at *Epping* aforesaid, was examined upon his corporal oath before *John Clevely*, Esq; then one of the justices of our now said lord the King assigned to keep the peace of the said lord the King, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the county aforesaid, inhabiting within the

the said hundred, according to the form of the statute of the twenty seventh year of the reign of our said lady *Elizabeth*, late queen of *England*, in such cases made and provided; and the said *John Warner* upon his said oath then said, that he did not know the parties who committed the said robbery, nor either of them, and forty days were past after the said robbery committed, and the said public notice given thereof in the said *London Gazette*; and before the issuing of the said original writ, yet the said inhabitants in the said hundred have not hitherto made amends to the said *John Warner* for the said robbery, nor have taken the bodies of the said felons and malefactors, nor the body of either of them, nor have they hitherto answered for the bodies of them, or the body of either of them, but have suffered the said felons and malefactors to escape, in contempt of our said lord the King, and to the great damage of the said *John Warner*, and against the form of the statute in such cases lately made and provided; whereby he saith that he is prejudiced, and damaged to the value of three hundred pounds, and therefore he brings his suit, &c.

R. Draper.

AND the said inhabitants of the hundred of *Ongar* Plea and
aforesaid, by *A. B.* their attorney, come and defend issue.
the force and injury, when, &c. and whatsoever,
&c. and say that they are not guilty of the premises
above charged upon them as the said *John Warner*,
who as well, &c. above complains against them, and
of this they put themselves upon the country, and
the said *John Warner*, who as well, &c. doth the
like; and upon this the said *John Warner*, who as
well, &c. saith that the aforesaid inhabitants in the
hundred of *Ongar* aforesaid, where the aforesaid robbery
was done, as parties defendants, against whom
he the said *John Warner*, who as well, &c. prays a
writ of the lord the now King to be directed to the
sheriff of the county of *Essex* aforesaid, to cause to
come here twelve free and lawful men of the neigh-
bourhood of the hundred of *A.* in the county of *Essex*
aforesaid, which said hundred of *A.* is the next hun-
dred

dred in the county of *Essex* to the aforesaid hundred of *Ongar*, next adjacent, to try the issue aforesaid above in form aforesaid joined, and because the aforesaid inhabitants, in the hundred of *Ongar* aforesaid, have not denied this, it is granted, &c. to the said *John Warner*, who as well, &c. Therefore the sheriff aforesaid is commanded that he cause to come here in days twelve free and lawful men of the neighbourhood of the aforesaid hundred of *A.* by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

REPLE.

REPLEVIN.

MICHAELMAS TERM, 8 GEO. II.

Talmage versus Shucburgh.

—To wit. **S**IR *Stukely Shucburgh*, Bart. was summoned to answer to *Charles Talmage*, of a plea wherefore he took the goods and chattels of him the said *Charles Talmage*, and them unjustly detained against sureties and pledges; and whereupon the said *Charles*, by *J. W.* his attorney, complaineth that the said Sir *Stukeley*, on the seventeenth day of *August*, in the year of our Lord one thousand seven hundred and thirty four, at *Freefolke*, otherwise *Freefolk Syferwaft*, in the county aforesaid, in certain places there called the *Reek Yard* and *Calver Close*, took the goods and chattels, to wit, one hundred and twenty quarters of wheat in the straw, eighty quarters of pease unthatched, and ten tons of hay of the said *Charles Talmage*, and them unjustly detained against sureties and pledges, until, &c.—whereupon the said *Charles* saith that he is prejudiced, and hath damage to the value of three hundred pounds, and thereof he bringeth this suit, &c.

AND the said Sir *Stukely*, by *R. P.* his attorney, Avowry. comes and defends the force and injury, when, &c. and well avows the taking the said goods and chattels in the said place called the *Reek Yard* and *Calver Close*, in which, &c. and justly, &c. because he saith that long before the said time when the said goods and chattels

chattels are supposed to have been taken, *Richard Andrews*, late of *Fryfolk*, in the county of *Southampton* Esq; was seised (among other lands, tenements and hereditaments) of and in the manor of *Fryfolke*, otherwise, *South Fryfolke*, otherwise *Fryfolk Syferwast*, with the appurtenances, in the said county of *Southampton* (whereof the said places in which, &c. are, and at the said time when, &c. and also from time whereof the contrary is not in the memory of man, were parcel;) and also of and in the several manors of *Chalgrave*, otherwise *Chalgrave's Land*, and of *Laverstoke*, otherwise *Larkstove*, with the appurtenances, in the said county of *Southampton*, and also of and in certain messuages, lands, tenements and hereditaments, with the appurtenances, situate, lying and being in *Fryfolk Priors*, in the parish of *Whytchurch*, otherwise *Whitchurch*, in the said county of *Southampton*, formerly in the several tenures or occupations of *William Sutton*, or *William Silver*, or their assignee or assigns, in his demesne as of fee, and being so seised thereof he the said *Richard Andrews* afterwards, at *Freefolk*, otherwise *Freefolk Syferwast* aforesaid, died seised of such his estate therein, after whose death the said manors, tenements and premises, with their appurtenances, descended to *Catharine* the wife of *John Powlet*, Esq; *Constance* otherwise *Constance*, the wife of *Richard Lambert*, gent. and *Ursula*, the wife of *Henry Norris*, Esq; as daughters and coheirs of the said *Richard Andrews*, whereby they the said *John Powlet* and *Catharine*, *Richard Lambert* and *Constance*, and *Henry Norris* and *Ursula*, entered into the said manors, tenements and premises, with the appurtenances, and were seised thereof in their demesne as of fee, in right of the said *Catharine*, *Constance* and *Ursula*, and being so seised thereof, the said *John Powlet* afterwards, at *Fryfolk* aforesaid, died, and the said *Catherine* survived him, and was sole seised of and in a third part of the said manors, tenements and premises, with the appurtenances, in her demesne as of fee, in coparcenary with the said *Richard Lambert* and *Constance*, *Henry Norris* and *Ursula*, in the right of the said *Constance* and *Ursula*; and the said *Richard Lambert* and

Constance

Constance afterwards, at *Freefolke* aforesaid, died, seised of such their estate therein, after whose death another third part of the said manors, tenements and premises, with the appurtenances, descended to *Thomas Lambert*, gent. as son and heir of the said *Constance*, whereby the said *Thomas Lambert* entered into the said manors, tenements and premises, with the appurtenances, and was seised of one other third part thereof in his demesne as of fee, in coparcenary with the said *Catherine*; and the said *Henry Norris* and *Ursula*, in right of the said *Ursula*, and the said *Henry Norris* and *Ursula* his wife, had issue between them, lawfully begotten, *Ursula Norris* their only daughter, which said *Ursula* the daughter afterwards, at *Fryfolk* aforesaid, died without issue of her body issuing; and afterwards the said *Ursula*, the wife of the said *Henry Norris*, at *Fryfolk* aforesaid, died, seised of such her estate of and in the said manors, tenements and premises, with the appurtenances, without any issue of her body issuing, living at the time of her death, and the said *Henry Norris* survived her, and held himself in, and was seised of the other third part of the said manors, tenements and premises, with the appurtenances, in his demesne as of freehold for the term of his life as tenant thereof, by the laws of England, in coparcenary with the said *Catherine Powlet* and *Thomas Lambert*; and the reversion of the said third part of the said *Ursula*, the wife of the said *Henry Norris*, after her death, descended to the said *Catherine Powlet* as sister, and to the said *Thomas Lambert* as nephew and coheirs of the said *Ursula*, whereby the said *Catherine Powlet* and *Thomas Lambert* were seised of the said reversion of the said third part of the said *Ursula* of and in the said manors, tenements and premises, with the appurtenances, in their demesne as of fee, in coparcenary with the said other two parts of them the said *Catherine Powlet* and *Thomas Lambert*, as aforesaid; and the said *Catherine Powlet*, *Thomas Lambert* and *Henry Norris*, being so respectively seised of their several parts aforesaid, long before the said time, then, &c. to wit, upon the seventeenth day of *July*, the twenty fourth year of the reign of our sovereign

reign

reign lady *Elizabeth*, late Queen of *England*, at *Freefolk* aforesaid, they the said *Catherine Powlet* and *Thomas Lambert* made partition between them of the said manors, tenements and premises, with the appurtenances, as well in possession as reversion (except of the messuages, lands, tenements and hereditaments, with the appurtenances abovementioned, to be formerly in the several tenures or occupations of the said *William Sutton* and *William Silver*, their assignee or assigns) so that by the said partition the said manor of *Laverstoke*, otherwise *Larkestoke*, with the appurtenances, among other lands, tenements and hereditaments, was allotted to the said *Thomas Lambert*, in allowance for his said part and purparty of the other manors, tenements and premises, with the appurtenances, which were the said *Richard Andrews*, and happening to him the said *Thomas*, and then allotted to the said *Catherine Powlet*; and that the said manor of *Fryfolk*, alias *Fryfolke Syferwast*, with the appurtenances (whereof the said places in which, &c. are and were parcel as aforesaid) and also the said manor of *Chalgrave*, alias *Chalgrave's Lands*, with the appurtenances, among other lands, tenements and hereditaments, were allotted to the said *Catherine Powlet* in allowance for her part and purparty of the other manor, tenements and premises, with the appurtenances, which were the said *Richard Andrews*, and happening to her the said *Catherine*, and then allotted to the said *Thomas Lambert*, so that the said *Catherine* and her heirs for rendering the said partition equal, should pay to the said *Thomas Lambert* and his heirs for ever twenty pounds every year, at the feast of the *Annunciation of the Virgin Mary*, and of *St. Michael the Archangel*, by equal portions to be paid out of (among other things allotted to the said *Catherine* as aforesaid) and to be issued out of the said manor of *Fryfolke*, alias *South Fryfolke*, alias *Fryfolk Syferwast*, whereof, &c. with the appurtenances, to which said partition the said *Catherine Powlet*, and *Thomas Lambert* then and there agreed soon after the making of which partition the said *Norris*, at *Freefolk* aforesaid, died, whereby the said *Catherine Powlet* was sole seized of the said manor

tenements, hereditaments and premises, with the appurtenances, so allotted to her as aforesaid in her demesne as of fee ; and the said *Thomas Lambert* was thereby sole seized of the said manor, tenements, hereditaments and premises, with the appurtenances, and of the said rent of twenty pounds so allotted to him as aforesaid, in his demesne as of fee ; and the said *Catherine Powlet* and *Thomas Lambert* being so respectively seized, he the said *Thomas Lambert*, afterwards *Sir Thomas*, at *Fryfolk* aforesaid, died seized of such his estate of and in the same manor, tenements, hereditaments and premises, with the appurtenances, and of and in the said rent so allotted to him as aforesaid, after whose death the said manor, tenements, hereditaments and premises, with the appurtenances, and the said rent so allotted to the said *Sir Thomas Lambert* and his heirs as aforesaid, descended to *Thomas Lambert*, Esq; the son and heir of the said *Sir Thomas Lambert*, by virtue whereof the said *Thomas Lambert* the son entered into the said manor, tenements, hereditaments and premises, with the appurtenances so allotted to the said *Sir T. Lambert* and his heirs as aforesaid, and was seized thereof, and also of the rent aforesaid, in his demesne as of fee ; and the said *Thomas Lambert* the son, being so seized thereof, afterwards, and before the said time, when, &c. to wit, upon the twenty fifth day of *November*, in the twenty first year of our sovereign lord *James*, the first, late King of *England*, &c. at *Freefolk* aforesaid, by indenture then and there made between the said *Thomas Lambert* the son, of the one part, and *Richard Barenger*, gent. of the other part, did for a considerable sum of money therein mentioned, bargain and sell unto the said *Richard Barenger* (among other things) the said yearly rent of twenty pounds, To have and to hold the same unto the said *Richard Barenger* and his assigns, from the twenty seventh day of *November*, which was in the year of our Lord one thousand six hundred and twenty four, for the term of fourscore and nineteen years from thence next ensuing and fully to be compleat and ended ; by virtue whereof the said *Richard Barenger* was possessed of the rent aforesaid ; and the said

Richard

Richard Barenger being so possessed thereof, and the said *Thomas Lambert* the son being seised of the reversion thereof, in his demesne as of fee as aforesaid, he the said *Thomas Lambert* the son, afterwards, at *Freefolk* aforesaid, died seised of such his estate therein, after whose death the said reversion of the said rent descended to *Robert Lambert*, Esq; as son and heir of the said *Thomas Lambert* the son; by virtue whereof the said *Robert Lambert* was seised of the said reversion of the rent aforesaid, in his demesne as of fee; and being so seised thereof, afterwards, and before the said time, when &c. to wit, on the morrow of the *Holy Trinity*, in the year of our Lord one thousand six hundred and fifty one, a certain fine levied in the court of the *Common Bench* at *Westminster*, before *Oliver St. John*, *John Pulifson*, *Peter Warburton*, and *Edward Atkyns*, justices, and others then and there present, between *John Elwes*, Esq; and *Edward Kent*, Esq; plaintiffs; and the said *Robert Lambert*, by the name of *Robert Lambert*, Esq; deforciant, of the said reversion of the said yearly rent, by the name of the yearly rent of twenty pounds, issuing out of the manor of *Fryfolk*, otherwise *South Fryfolk*, *Silverwast* and *Chalgrave*, with the appurtenances, whereupon a plea of covenant was summoned between them in the said count, that is to say, that the aforesaid *Robert* acknowledged the aforesaid rent to be the right of him the said *John* as that which the said *John* and *Edward* had of the gift of the aforesaid *Robert*, and that he did remise and quit claim from him and his heirs to the aforesaid *John* and *Edward*, and the heirs of the said *John* for ever; and moreover the said *Robert* granted for him and his heirs, and against the heirs of *Thomas Lambert*, father of the said *Robert* and *Thomas Lambert*, grandfather of the said *Robert*, for ever; as by the said fine now remaining in the court of our lord the King of the Bench here, to wit, at *Westminster* aforesaid, more fully appears, which said fine so had and levied as aforesaid, was had and levied to the use of *John Trott* the elder and *John Trott* the younger, and their heirs; by virtue whereof the said *John Trott* the elder, and *John Trott* the younger, were seised

of the said reversion of the said rent in their demesne as of fee, and being so seised, he the said *John Trott* the elder, afterwards, and before the said time, when, &c. at *Freefolk* aforesaid, died seised of such his estate therein, after whose death the said *John Trott* the younger, was sole seised of the said reversion of the said rent in his demesne as of fee, by right of survivorship; and being so seised thereof, he the said *John Trott* the younger, afterwards, and before the said time when, &c. at *Freefolk* aforesaid, died seised of such his estate therein, after whose death the said reversion of the said rent descended to *Catherine Trott*, spinster, as only daughter and heir of the said *John Trott* the younger; by virtue whereof the said *Catherine Trott* was seised of the said reversion of the said rent in her demesne as of fee, and being so seised thereof she the said *Catherine Trott* afterwards, and before the said time when, &c. to wit, upon the twentieth day of *May*, in the year of our Lord one thousand six hundred and ninety one, at *Freefolk* aforesaid, took to her husband *Sir Charles Shucburgh*, Bart. and was then and there married to him, by virtue whereof they the said *Charles* and *Catherine* were seised of and in the said reversion of the said rent in their demesne as of fee; and being so seised thereof, they the said *Sir Charles* and *Catherine* afterwards, and before the said time when, &c. at *Freefolk* aforesaid, died seised of such their estate therein, after whose death the said reversion of the said rent descended to *Sir John Shucburgh*, Bart. as son and heir of the said *Catherine Shucburgh*, whereby the said *Sir John* was seised of the said reversion of the rent aforesaid, in his demesne as of fee; and being so seised thereof, the said term of ninety nine years abovementioned to be granted to the said *Richard Barenger*, expired, whereby the said *Sir John* was seised of and in the said rent in his demesne as of fee; and being so seised thereof, he the said *Sir John* afterwards, and before the said time when, &c. died seised of such his estate therein, after whose death the said rent descended to the said *Sir Stukely Shucburgh*, as son and heir to the said *Sir John Shucburgh*, whereby he the said *Sir Stukely* was and still is

DECLARATIONS, PLEADINGS, &c.

is seised of the said rent in his demesne as of fee, and because two hundred pounds of the said rent due and payable to the said Sir *Stukely* after the death of the said Sir *John Shuchburgh*, for ten years, ended at the feast of the *Annunciation of the Virgin Mary*, in the year of our Lord one thousand seven hundred and thirty four, were at the said feast, and also at the said time, when, &c. in arrear and unpaid to the said Sir *Stukely*, he the said Sir *Stukely* well avows the taking of the said goods and chattels in the said places in which, &c. justly, &c. as in parcel of the said manor of *Fryfolk*, otherwise *South Fryfolk*, otherwise *Fryfolk Syferwast*, with the appurtenances, liable for distress for the said rent as aforesaid, in the name of a distress for the said two hundred pounds of the rent aforesaid, so in arrear and unpaid to the said Sir *Stukely*, and this he is ready to verify; whereupon he prays judgment, and that a return of the said goods and chattels, together with his damages and costs and charges, according to the form of the statute in such case made and provided, may be adjudged to him. *

Plea, nonpartition made.

AND the said *Charles Talmage* saith, that the said Sir *Stukely*, by reason of any thing by him in his said avowry alledged, ought not justly to avow the said taking of the said goods and chattels in the said places, in which, &c. because he saith that the said *Catherine Powlet* and the said *Thomas Lambert* made not partition between them of the said manors, tenements and premises, with the appurtenances, in manner and form as the said Sir *Stukely* by his said avowry hath above alledged, and this the said *Charles Talmage* prays may be enquired of by the country, and the said Sir *Stukely* the like; therefore, &c.

M. Wright, *Serjeant*.

N. B. Verdict and judgment *pro defendante*.

Hunt

* Drawn by *Draper*, perused by *Chapple*, *Serjeant*.

Hunt versus Waterman.

Of the term of St. HILARY, in the eighth year of the reign of our sovereign lord *George the Second*, by the grace of God of *Great Britain, France and Ireland*, King, defender of the faith. *Roll. Ventris.*

By Original.

John Waterman was summoned to answer to *James Hunt*, Esq; wherefore he took the cattle of the said *James*, and unjustly detained them against sureties and pledges, and so forth.

AND WHEREUPON the same *James* by *A. B.* his attorney, complains that the aforesaid *John*, upon the first day of *May*, in the fifth year of the reign of his present majesty King *George the Second*, at *King's Cleare*, in the county aforesaid, in a certain place there called *North Sidmuntun Common*, took the cattle, to wit, two horses, one bull, and one heifer of the said *James*, and unjustly detained them against sureties and pledges, until (and so forth) whereupon the same *James* saith, that he is prejudiced and hath damage to the value of twenty pounds, and thereupon he brings his suit (and so forth).

AND the said *John* by *C. D.* his attorney, comes and defends the force and injury, when, &c. as bailiff of *William Kingsmill*, Esq; and well acknowledges the taking of the said cattle in the aforesaid place, in which the said taking is supposed unjustly, because he says, that the said place where the said cattle are supposed to be taken doth contain, and at the said time when the said taking is supposed, did contain in itself one hundred acres of arable land with the appurtenances, lying in *Sidmuntun*, in the parish of *Kingscleare* aforesaid, in the said county, which said one hundred acres of land with the appurtenances are, and at the said time when the said taking is supposed, were the soil and freehold of the said *William Kingsmill*; and because the said cattle at the said time when the said taking

Avowtry.

is supposed, were in the said one hundred acres of land in which the said taking is supposed, depasturing the grafs then growing there and doing damage there, he the said *John* as bailiff of the said *William Kingsmill* well acknowledges the taking of the said cattle in the aforesaid one hundred acres of land in which the said taking is supposed, and justly, for doing damage there, and this he is ready to verify, wherefore he prays judgment, and that a return of the said cattle, together with his damages, costs and charges in this behalf expended, according to the form of the statute in such case made and provided, may be adjudged to him by this court.

Plea in bar.

AND the said *James* saith, that the said *John Waterman* as bailiff of the said *William Kingsmill*, ought not for the reason above alledged to acknowledge the taking of the said cattle in the said place where the same were taken, to be just, because he saith, that the said place called *North Sidmuntun Common* where the said cattle were taken, is, and at the said time of taking the said cattle was one hundred acres of pasture with the appurtenances, in *Sidmuntun* aforesaid, in the said parish of *Kingscleare*, and that long before the said time when the same were taken, the said *James* was and still is seised of and in a messuage and farm with their appurtenances called *Chamber's Farm*, in *Sidmuntun* aforesaid, in his demesne as of fee, and the said *James* and all those whose estate he hath, and at the said time of taking the said cattle, had of and in the said messuage and farm with the appurtenances, time out of mind have had and been used and accustomed, and to have for themselves, their farmers and tenants of the said messuage and farm with their appurtenances, common of pasture in the aforesaid one hundred acres of pasture called *North Sidmuntun Common*, where the said cattle were taken, for all their geldings, bulls, cows and heifers, *levant and couchant* upon the said messuage and farm with the appurtenances every year, from the twenty fifth day of *March* to the first day of *November* then next ensuing, as belonging and appertaining

pertaining to their said messuage and farm with their appurtenances, and the said *James* being so thereof seised, he the said *James* after the twenty fifth day of *March*, in the fifth year aforesaid, and before the first day of *November*, in the same year, and also before the said time of taking the said cattle, to wit, upon the said first day of *May*, in the fifth year aforesaid, put two geldings and a bull and an heifer, being the cattle in the said declaration mentioned, and the proper cattle of the said *James*, *levant* and *couchant* upon his said messuage and farm with their appurtenances, into the said place called *North Sidmuntun Common*, where the said cattle were taken to depasture the grafs then growing there, and to use the common of the said *James* there, as it was lawful for him to do, which said cattle of the said *James* were in the said place called *North Sidmuntun Common*, depasturing the grafs then growing there, and using the common of the said *James* there, until the said *John Waterman* afterwards, and before the said first day of *November*, in the fifth year aforesaid, of his own wrong took the said cattle at *Sidmuntun* aforesaid, in the said place called *North Sidmuntun Common*, so depasturing and using the said common of the said *James* there, and unjustly the same detained against sureties and pledges until the sheriff made deliverance thereof to the said *James*, as the said *James* above complains against him for the same, and this he is ready to verify, wherefore inasmuch as the said *John Waterman* hath above acknowledged the taking of the said cattle in the said place where the same were taken, he the said *James* prays judgment, that his damages by reason of the taking and unjustly detaining of the said cattle may be adjudged to him by this court.

AND the said *John* (as before) saith, that the said Replication. place where the said cattle were in, and at the time of taking the said cattle, was the ground and freehold of the said *William Kingsmill*, as the said *John* hath above alledged, without that, that the said *James* and all those whose estate he hath, and at the said time of taking the said cattle had, of and in the said mes-

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suage and farm with the appurtenances, time out of mind have had, and been used and accustomed to have for themselves, their farmers and tenants of the said messuage and farm with their appurtenances, common of pasture in the aforesaid one hundred acres of pasture called *North Sidmuntun Common*, where the said cattle were taken, for all their geldings, bulls, cows and heifers, *levant and couchant* upon the said messuage and farm, with the appurtenances, every year, from the twenty fifth day of *March* to the first day of *November* then next ensuing, as belonging and appertaining to the said messuage and farm, with the appurtenances, as the said *James* hath above alledged, and this he is ready to verify; wherefore he prays judgment, and that a return of the said cattle, together with his damages, costs and charges may be awarded to him.

Demurrer.

AND the said *James Hunt* saith that the said plea of the said *John Waterman* above pleaded in manner and form aforesaid, in reply to the said bar of the said *James Hunt*, to the said cognizance of the said *John Waterman*, and the matter in the same contained, are not sufficient in the law for the said *John Waterman* to maintain the taking of the said cattle in the said place where, &c. to be just, and to have a return of the said cattle, and to bar him the said *James* from having his said action against the said *John Waterman*, to which the said *James Hunt* hath no need, nor is he obliged by the law of the land to answer in any manner, and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, he the said *James Hunt* (as before) prays judgment, and that his damages by reason of the taking and unjustly detaining the said cattle, may be adjudged to him, &c.

Joinder.

AND the said *John Waterman* saith, that his said plea in manner and form aforesaid above pleaded, in reply to the said plea in bar of the said *James Hunt*, and the matter in the same contained, are sufficient in law for him the said *John Waterman* to maintain the taking of the said cattle in the said place, where, &c.

&c. to be just, and to have a return of the said cattle, and to bar the said *James Hunt* from having his said action against him, which said plea, and the matter therein contained, the said *John Waterman* is ready to verify and prove, as to the court shall seem meet, and because the said *James Hunt* hath not answered the said plea, nor hitherto hath any ways denied the same, the said *John Waterman* (as before) prays judgment, and that a return of the said cattle, together with his damages, costs and charges in this behalf expended, according to the form of the statute in such case made and provided, may be adjudged to him by the court; but because, &c.

HILARY TERM, 9 GEO. II. 1735.

Tilbury versus Hunt.

—To wit, *James Hunt*, Esq; was summoned to answer to *Thomas Tilbury* of a plea wherefore he took the cattle of him the said *Thomas*, and the same unjustly detained against sureties and pledges; and whereupon the said *Thomas*, by *F. W.* his attorney, complains that the said *James*, on the twenty fourth day of *March*, in the year of our Lord one thousand seven hundred and thirty four, at *Mitcheldever*, in the county aforesaid, in certain places there called the *Middle Field*, otherwise the *Middle Grounds*, *The Beacon Lands*, and *The Ten Acres*, the goods and cattle of the said *Thomas*, to wit, eighty two sheep and one lamb, did take and unjustly detain them against sureties and pledges until, &c. whereupon the said *Thomas* saith that he is injured, and hath sustained damages to the value of forty pounds, and thereof he brings his suit, &c.

AND the said *James*, by *T. S.* his attorney, comes Avowry. and defends the force and injury, when, &c. and the said *James* well avows the taking of the said cattle in the said place called the *Middle Field*, otherwise the *Middle Ground*, *The Beacon Lands*, and *The Ten Acres*, because he says that the said place, in which, &c. at

suage and farm with the appurtenances, time out of mind have had, and been used and accustomed to have for themselves, their farmers and tenants of the said messuage and farm with their appurtenances, common of pasture in the aforesaid one hundred acres of pasture called *North Sidmuntun Common*, where the said cattle were taken, for all their geldings, bulls, cows and heifers, *levant and couchant* upon the said messuage and farm, with the appurtenances, every year, from the twenty fifth day of *March* to the first day of *November* then next ensuing, as belonging and appertaining to the said messuage and farm, with the appurtenances, as the said *James* hath above alledged, and this he is ready to verify; wherefore he prays judgment, and that a return of the said cattle, together with his damages, costs and charges may be awarded to him.

Demurrer.

AND the said *James Hunt* saith that the said plea of the said *John Waterman* above pleaded in manner and form aforesaid, in reply to the said bar of the said *James Hunt*, to the said cognizance of the said *John Waterman*, and the matter in the same contained, are not sufficient in the law for the said *John Waterman* to maintain the taking of the said cattle in the said place where, &c. to be just, and to have a return of the said cattle, and to bar him the said *James* from having his said action against the said *John Waterman*, to which the said *James Hunt* hath no need, nor is he obliged by the law of the land to answer in any manner, and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, he the said *James Hunt* (as before) prays judgment, and that his damages by reason of the taking and unjustly detaining the said cattle, may be adjudged to him, &c.

Joinder.

AND the said *John Waterman* saith, that his said plea in manner and form aforesaid above pleaded, in reply to the said plea in bar of the said *James Hunt*, and the matter in the same contained, are sufficient in law for him the said *John Waterman* to maintain the taking of the said cattle in the said place, where, &c.

&c. to be just, and to have a return of the said cattle, and to bar the said *James Hunt* from having his said action against him, which said plea, and the matter therein contained, the said *John Waterman* is ready to verify and prove, as to the court shall seem meet, and because the said *James Hunt* hath not answered the said plea, nor hitherto hath any ways denied the same, the said *John Waterman* (as before) prays judgment, and that a return of the said cattle, together with his damages, costs and charges in this behalf expended, according to the form of the statute in such case made and provided, may be adjudged to him by the court; but because, &c.

HILARY TERM, 9 GEO. II. 1735.

Tilbury versus Hunt.

—To wit, *James Hunt*, Esq; was summoned to answer to *Thomas Tilbury* of a plea wherefore he took the cattle of him the said *Thomas*, and the same unjustly detained against sureties and pledges; and whereupon the said *Thomas*, by *F. W.* his attorney, complains that the said *James*, on the twenty fourth day of *March*, in the year of our Lord one thousand seven hundred and thirty four, at *Mitcheldever*, in the county aforesaid, in certain places there called the *Middle Field*, otherwise the *Middle Grounds*, *The Beacon Lands*, and *The Ten Acres*, the goods and cattle of the said *Thomas*, to wit, eighty two sheep and one lamb, did take and unjustly detain them against sureties and pledges until, &c. whereupon the said *Thomas* saith that he is injured, and hath sustained damages to the value of forty pounds, and thereof he brings his suit, &c.

AND the said *James*, by *T. S.* his attorney, comes Avowry. and defends the force and injury, when, &c. and the said *James* well avows the taking of the said cattle in the said place called the *Middle Field*, otherwise the *Middle Ground*, *The Beacon Lands*, and *The Ten Acres*, because he says that the said place, in which, &c. at

the said time when, &c. were and are the soil and freehold of the said *James*, and because the said cattle at the said time, when &c. were in the said places, in which, &c. feeding on the grafs then growing there, &c. doing damage to the said *James* there, the said *James* well avows the taking of the said cattle in the said places, in which, &c. and unjustly, &c. so doing damage there, &c.

Bar.

AND the said *Thomas* saith that the said *James*, for the reason above alledged, ought not to avow the taking of the said cattle in the said places, in which, &c. to be just, because he saith that before the said time of the taking of the cattle aforesaid, and also at the said time of taking, &c. *Richard Edgecombe*, Esq; was seised of and in a certain close called the *Bakelands*, formerly called the *Down*, otherwise *Litchfield Down*, with the appurtenances, lying and being in the parish of *Stephenton*, in the county aforesaid, in his demesne as of fee, and being so seised thereof, he the said *Richard Edgecombe* before the said time when, &c. to wit, upon the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty, at the parish of *Mitcheldever* aforesaid, demised to the said *Thomas* the said close called the *Bakelands*, with the appurtenances, To have and to hold the same to the said *Thomas* from thenceforth so long as both the said parties should please, by virtue of which demise the said *Thomas* before the said time when, &c. entered into the said demised premises, with the appurtenances, at the said time, when, &c. was and still is possessed thereof; and the said *Thomas* further saith, that the said close called the *Bakelands*, lies, and at the said time when, &c. and also time out of mind lay contiguous and next adjoining to the said close of the said *James*, called the *Middle Field*, otherwise, &c. in which, &c. and that the said close called the *Middle Field*, &c. on which, &c. lies, and at the said time when, &c. and also time out of mind lay contiguous and next adjoining to the said places called the *Beacon Lands*, in which, &c. on one side, and to the said close called the *Ten Acres*, in which, &c. on the

the other side thereof, and that the owners and occupiers of the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. from time to time, from time whereof the contrary is not in the memory of man, have maintained, repaired and amended, and have been used and accustomed, and of right ought to make, maintain, repair and amend the hedges and fences between the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. and the said close called the *Bakelands*, lest the cattle, going and depasturing in the said close called the *Bakelands*, should at any time through defect of the said hedges and fences, escape out of the said close called the *Bakelands*, into the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. and from thence into the said closes called the *Beacon Grounds* and the *Ten Acres*, in which, &c. and do damage there; and the said *Thomas* further saith that he the said *Thomas* being so possessed of the said close called the *Bakelands*, with the appurtenances as aforesaid, before the said time when, &c. to wit, upon the said twenty fourth day of *March*, in the said year of our Lord one thousand seven hundred and thirty four, put his said cattle into the said close called the *Bakelands*, to depasture the grafs then growing there, and that the hedges and fences between the said close called the *Bakelands*, and the said close called the *Middle Fields*, otherwise the *Middle Ground*, in which, &c. before and at the said time when, &c. were broken down and in decay for want of repairing thereof, and not sufficiently maintained to keep out cattle from escaping into the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. whereby the said cattle of the said *Thomas* so going and depasturing in the said close called the *Bakelands*, before the said time of taking, &c. to wit, upon the said twenty fourth day of *March*, in the said year of our Lord one thousand seven hundred and thirty four, escaped out of the said close called the *Bakelands*, and from thence entered into the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. and from thence into the said close called the *Beacon Ground* and the *Ten Acres*, in which,

which, &c. for want of sufficient repairing and maintaining the said hedges and fences between the said close called the *Bakelands* and the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. and for the cause aforesaid were in the said several closes, in which, &c. feeding the grafs there growing, until the said *James* afterwards, to wit, the same day and year last abovementioned, of his own wrong, took the said cattle in the said several places, in which, &c. and unjustly detained them against sureties and pledges, until, &c. as the said *Thomas* above complains against him, and this he is ready to verify; wherefore inasmuch as the said *James* hath above acknowledged the taking of the said cattle in the said places in which, &c. the said *Thomas* prays judgment, and that his damages by reason of the taking and unjust detaining of the said cattle, may be adjudged to him, &c.

Rejoinder.

AND the said *James* saith, that he by any thing above alledged by the said *Thomas* in pleading, ought not to be barred from having his said avowry, because protesting that the owners and occupiers of the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. from time to time, from time whereof the contrary is not in the memory of man, have not made, maintained, repaired and amended, and have not been used and accustomed, nor of right ought to make, maintain, repair and amend the hedges and fences between the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. and the said close called the *Bakelands*, as is above alledged for plea, the said *James* as before saith, that the said cattle at the said time when, &c. were in the said places called the *Middle Field*, otherwise the *Middle Ground*, the *Beacon Ground* and the *Ten Acres*, in which, &c. feeding the grafs there growing, and doing damage to the said *James* there, without this, that the said hedges and fences between the said close called the *Bakelands*, and the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. were broken down and in decay for want of repairing thereof, as the said *Thomas* hath above

above by his pleading alledged, and this he is ready to verify; wherefore (*as before*) he prays judgment, and that a return of his said cattle, together with his damages, &c. may be adjudged to him, &c.

AND the said *Thomas* as before saith, that the said hedges and fences between the said close called the *Bakelands*, and the said close called the *Middle Field*, otherwise the *Middle Ground*, in which, &c. were broken down and in decay for want of repairing thereof, in manner and form as he the said *Thomas* hath by his said plea above alledged, and this he prays may be inquired of by the country, &c.

Surrejoinder.

Cole versus Combes.

—To wit. *Edward Cole* was summoned to answer *William Combes* of a plea, wherefore he took the goods and chattels of the said *William*, and unjustly detained them against pledges and sureties, &c. and whereof the said *William* by *F. H.* his attorney complains, that the said *Edward* on the sixth day of *August*, in the year of our Lord one thousand seven hundred and thirty five, at the parish of *Heston*, in the county aforesaid, in certain places there called *Gale's Orchard*, and the great close of *Heston Westfield*, took the goods and chattels of the said *William*, to wit, four hundred shoeks of wheat, and unjustly detained the same against pledges and sureties until, &c. wherefore the said *William* saith, that he is injured and hath sustained damage to the value of one hundred pounds, and therefore he brings his suit. *Pledges, &c.*

AND the said *Edward Cole* by *A. B.* his attorney, comes and defends the force and injury, when, &c. and the said *Edward* well avows the taking of the said goods and chattels in the said places in which, &c. and justly, &c. because he saith, that at the said time in which, &c. the said place called *Gale's Orchard* contained in itself three acres, and that two acres, parcel of the said place called *Gale's Orchard*, and half an acre, parcel

Avowry.

parcel of the said place called the *Great Field*, are and at the same time in which, &c. and from time whereof the memory of man is not to the contrary, were parcel of the manor of *Heston*, in the county of *Middlesex*, and customary lands of inheritance of the same manor, and demised and demisable by copy of the roll of the court of the said manor, by the lord of the said manor, or by his steward of the court of the said manor for the time being, to any person or persons willing or desirous to take the same, in fee simple or otherwise, to hold at the will of the lord, according to the custom of the said manor, of which said manor with the appurtenances *Robert Child*, knight, long before the said time in which, &c. to wit, on the twelfth day of *January*, in the first year of the reign of the late lord King *George the First*, was of right lord, to wit, seised thereof in his demesne as of fee, and the said *Robert Child*, knight, lord of the said manor, held at the said manor the said twelfth day of *January*, in the said first year of the said reign of the said late King *George*, by *Oliver Martin*, gent. deputy of the said court of the said manor, to *John Conyers*, Esq; chief steward of the court of the said manor of the said *Robert Child*, knight, by copy of court roll of the said manor, granted to *Daniel Cole* the said two acres of customary lands, parcel of the said place called *Gale's Orchard*, and the said half acre of customary lands, parcel of the said place called the *Great Field*, with their appurtenances, to hold to the said *Daniel Cole*, and his heirs and assigns, at the will of the lord, according to the custom of the said manor, by virtue whereof the said *Daniel Cole* entered into the said two acres, parcel of the said place called *Gale's Orchard*, and the said half acre, parcel of the said place called the *Great Field*, and was seised thereof in his demesne as of fee, at the will of the lord, according to the custom of the said manor; and he the said *Daniel Cole*, being so seised, afterwards, to wit, the twelfth day of *January*, in the year of our Lord one thousand seven hundred and twenty eight, at *Heston* aforesaid, in the

the county aforesaid, demised the said two acres of land, and the said half acre of land to the said *Edward Cole*. To have and to hold to the said *Edward Cole* from the feast day of *St. Michael the Archangel* then last past for a year, and so from year to year, yielding and paying therefore yearly, during such time as the said *Edward Cole* should hold the same, the rent of four pounds by equal half yearly payments, to wit, at the feast day of the *Blessed Virgin Mary*, and *St. Michael the Archangel*; by virtue whereof the said *Edward Cole*, afterwards, to wit, on the said twelfth day of *January*, in the said year of our Lord one thousand seven hundred and twenty eight, entered into the said two acres and the said half acre of land, and was possessed thereof, and the said *Daniel Cole* was seised of the reversion in his demesne as of fee, at the will of the lord, according to the custom of the said manor; and the said *Edward Cole* further saith, that he the said *Edward Cole* on the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and twenty seven, was seised of a certain messuage and tenement, with the appurtenances, in *Heston*, in the said county, and of twenty two acres and an half of freehold land in *Heston* aforesaid, whereof one acre in the said place called *Gale's Orchard*, and all the said place called the *Great Orchard* (except the said half acre of copyhold in *Heston Westfield*) are parcel of his demesne as of fee; and the said *Edward Cole* being so seised of the said freehold lands, and being so possessed of the said copyhold land, he the said *Edward Cole*, on the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and thirty two, at *Heston* aforesaid, in the county aforesaid, demised and let unto the said *William Combes* the said copyhold lands and the said messuage, and all the said freehold lands in *Heston* aforesaid, To have and to hold the said premises to the said *William Combes* from the feast of *St. Michael the Archangel*, for a year, and so from year to year, yielding and paying therefore yearly and for every year in which the said *William Combes* should hold the said demised

demised premises, by virtue of the said demise to the said *Edward Cole*, thirty eight pounds, at the feast days of the *Annunciation of the Blessed Virgin Mary*, and *St. Michael the Archangel*, by even and equal portions; by virtue of which demise the said *William Combes* entered into the said demised premises, and was possessed thereof; and the said *Edward Cole* was, and yet is seised of the reversion of the said messuage and freehold premises in his demesne as of fee, and the said *Daniel* was seised of the reversion of the said copyhold premises in his demesne as of fee, at the will of the lord, according to the custom of the said manor; and the said *Daniel Cole* being so seised thereof on the twenty eighth day of *January*, in the year of our Lord one thousand seven hundred and thirty four, at *Heston* aforesaid, in the county aforesaid, died, so seised thereof, without issue, after whose death the said two acres and the said half acre descended to the said *Edward Cole*, as brother and heir of the said *Daniel Cole*, according to the custom of the said manor, from time whereof the memory of man is not to the contrary, used and approved of in the said manor; and that on the twelfth day of *June*, in the year of our Lord one thousand seven hundred and thirty five, Sir *Francis Child* knight, then being lord of the said manor, at the next court of the said manor of him the said Sir *Francis Child* of his said manor, held at the said manor before *Oliver Martin*, steward of the court of the said manor, by copy of roll of the court of the said manor to the said *Edward Cole* granted seisin of the said two acres and the said half acre, To have and to hold to the said *Edward Cole* and his heirs and assigns for ever, at the will of the lord according to the custom of the said manor, by virtue whereof the said *Edward Cole* was seised of the said two acres, and the said half acre in his demesne as of fee at the will of the lord, according to the custom of the said manor, and was and yet is so seised as aforesaid, of the said messuage or tenement, and the said twenty two acres and an half of freehold land in his demesne as of fee in *Heston* aforesaid, and yet is so seised thereof

and the said *William Combes* from the making the said demise thereof to him hath been, and yet is possessed thereof, and because that nineteen pounds of the rent aforesaid, so reserved as aforesaid, for half a year's rent ending at the feast of *St. Michael the Archangel*, in the year of our Lord one thousand seven hundred and thirty four, and at the said time in which, &c. to the said *Edward Cole* was in arrear and not paid, the said *Edward Cole* doth well avow the taking of the said goods and chattels in the said places in which, &c. as parcel of the lands demised as aforesaid, in the name of a distress, for the said nineteen pounds in form aforesaid, in arrear, and justly, &c. for the rent so being in arrear, and this he is ready to verify, and prayeth that return of the said goods and chattels, together with his damages may be adjudged to him, &c. and that the said *William Combes* may be precluded from having his action against him.

J. Agar.

AND the said *William Combes* saith, that the said *Edward* for the reason above alledged ought not to avow the taking of the said goods and chattels in the said places in which, &c. to be just, because he saith that the said *Edward Cole* upon the said sixth day of *August*, in the said year one thousand seven hundred and thirty five, at the parish aforesaid, in the said places called *Gale's Orchard*, the *Great Close*, and *Heston Westfield*, of his own wrong took the said goods and chattels of the said *William Combes*, and unjustly detained them against pledges and sureties until, &c. as the said *William Combes* above thereof complains, without this, that the said *Edward Cole* demised to the said *William Combes* the said copyhold land, messuage, and freehold lands, in manner and form as the said *Edward* hath in his said avowry above alledged, and this he is ready to verify, &c. and the said *William Combes* for further plea in this behalf by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, further saith, that before the said feast of *St.*

Michael

DECLARATIONS, PLEADINGS, &c.

Michael the Archangel, in the said year one thousand seven hundred and thirty four, to wit, upon the first day of *May*, in the same year, the said *Edward*, by force and arms, &c. entered into the said copyhold lands, messuage, and freehold lands in the said avowry mentioned, in and upon the possession of the said *William Combes*, and expelled, and amoved the said *William Combes* from the possession thereof, and kept him so expelled and amoved therefrom from thence, until and at and after the said feast of *St. Michael the Archangel*, in the said year one thousand seven hundred and thirty four, and this he is ready to verify ; wherefore inasmuch as the said *Edward Cole* hath above acknowledged the taking of the said goods and chattels in the said place, in which, &c. the said *William Combes* prays judgment, and that his damages by reason of the taking and unjust detaining the said goods and chattels may be adjudged to him, &c.

R. Draper.

TRESPASS.

MICHAELMAS TERM 9 Geo. II. 1736.

Tiller *versus* Wedgeborough.

—To wit. **H**ENRY TILLER complains of *John* For taking
Wedgeborough, being in the custody of away cattle.
 the marshal, &c. of a plea of trespass, FOR THAT the
 said *John* on the eighth day of *September*, in the year of
 our Lord one thousand seven hundred and thirty two,
 with force and arms, took and led away the cattle,
 to wit, two hundred sheep of the said *Henry Tiller*, of
 the price of two hundred pounds, at the parish of *Bed-*
fort, in the county aforesaid, then found, and then
 and there impounded them, and kept and continued
 them there in pound for a long time, to wit, for the
 space of forty eight hours then next following, where-
 by the said cattle were much damaged and worsted,
 and then and there did other wrongs to him, against
 the peace of our sovereign lord the now King, and to
 the said *Henry Tiller* his damage of forty pounds, and
 therefore he brings his suit, &c.

AND the said *John*, by *Giles Taylor* his attorney, Plea.
 comes and defends the force and injury, when, &c.
 and as to the coming with force and arms, and every
 thing that is against the peace of our said lord the
 King, and also as to all the trespass aforesaid, except
 the taking, leading, away, impounding, and keeping
 and continuing in pound the cattle aforesaid, by him
 the

the said *John* above supposed to have been committed, he the said *John* saith, that he is in no wise guilty thereof as the said *Henry* above thereof complains against him, and of this he puts himself upon the country, and the said *Henry* likewise; and as to the taking, leading away, impounding, and keeping and continuing in pound the cattle aforesaid, by him the said *John* above supposed to have been committed, he the said *John* saith, that he the said *Henry* ought not to have or maintain his said action for the same, because he saith, that one *Robert Taylor* upon the said eighth day of *September*, in the said year of our Lord one thousand seven hundred and thirty five, and long before was, and still is lawfully possessed of and in three acres of land lying in a certain close called *Mead Shot*, with the appurtenances, situate, lying and being in the parish of *Bedfort* aforesaid, and being so possessed thereof, the said cattle, upon the same day and year, against the will of the said *Robert*, were in the said three acres, feeding on the grass then growing there, and doing damage to the said *Robert* there, for which cause the said *John*, as servant to the said *Robert*, and by his command, upon the same day and year, at the parish aforesaid, in the said three acres of the said *Robert* then took the said cattle so doing damage to the said *Robert* there, in the name of a distress for the said damage so done there, and led them away to the common pound in the parish aforesaid, and for the cause aforesaid, impounding them in the said common pound, and kept and continued them in the said pound for the space of forty eight hours then next following, as it was lawful for him to do, which is the same taking, leading away, impounding, and keeping and continuing in pound, the cattle aforesaid, whereof the said *Henry* above complains against him, and this he is ready to verify, wherefore he prays judgment if the said *Henry* ought to have or maintain his said action against him for the same.

R. Draper.

AND

AND the said *Henry*, as to the said plea of the said *John*, above pleaded in bar, as to the taking, leading away, impounding, and keeping and continuing in pound the cattle aforesaid, by him above done, saith, that he by any thing before alledged ought not to be barred from having and maintaining his aforesaid action for the same against the said *John*, because he saith that the said *John* at the said time, when, &c. with force and arms, &c. of his own wrong, and without any such cause as is above alledged, took and led away the cattle aforesaid of the said *Henry*, at the parish aforesaid then found, and then and there impounded them, and kept and continued them there in pound for the time abovementioned, in manner and form as the said *Henry* hath above declared against him, and this he prays may be inquired of, &c.

Fulford versus Woodnut.

—To wit. *Anthony Fulford* complains of *Anthony Woodnut*, *Jonathan Sheath*, *Thomas Walker* and *James Wadman*, in custody of the marshal, &c. for this, THAT the said *Anthony*, *Jonathan*, *Thomas* and *James*, upon the seventh day of *April*, in the year of our Lord one thousand seven hundred and thirty five, with force and arms, to wit, with swords and staves, made an assault upon the said *Anthony*, at *Gosport*, in the said county, and then and there beat, wounded, and evil treated him, and imprisoned him, and kept him in prison there for a long time, to wit, for the space of twenty four hours, and also broke and entered the dwelling house of the said *Anthony*, at *Gosport* aforesaid, and disturbed him in his peaceable and quiet possession thereof, and continued therein for a long time, to wit, for the space of twenty four hours, and took and carried away his goods and chattels, to wit, one thousand hats, one thousand pieces of broad cloth, one thousand pieces of drugget, one thousand pieces of German serge, one thousand pieces of shalloon, &c. of the value of five hundred pounds, then found there,

For assault, battery, false imprisonment, breaking and entering dwelling house, and taking away plaintiff's property.

DECLARATIONS, PLEADINGS, &c.

there, and kept and detained the same for a long time, to wit, for the space of twenty four hours, and then and there did him other injuries, against the peace of our lord the King, and to the damage of the said *Anthony* one hundred pounds, and therefore he brings suit, &c.

TRINITY TERM, 10 GEO. II.

Tilbury versus Winchworth.

For killing
plaintiff's
cattle.

—To wit. *Thomas Tilbury* complains of *John Winchworth*, in the custody of the marshal, &c. for this, THAT the said *John* upon the first day of *May*, in the year of our Lord one thousand seven hundred and thirty six, and at divers other days and times between that day and the first day of *June*, in the same year, with force and arms, at the parish of *Mitchelton*, in the said county, took, chased, drove, spoiled, and killed divers cattle, to wit, one hundred sheep, and one hundred lambs of him the said *Thomas Tilbury*, of the price of forty pounds, then found there, and did him other wrongs, to the great damage of the said *Thomas Tilbury*, and against the peace of his present Majesty, whereby he says he is prejudiced, and hath damage to the value of twenty pounds, and thereupon he brings his suit, &c. *Pledges.*

Tilbury versus Hunt.

Fortreading
down and
consuming
plaintiff's
grafs by de-
fendant with
his cattle.

—To wit. *Thomas Tilbury* complains of *James Hunt*, Esq; *Richard Wilkins* and *Richard Goddard*, in the custody of the marshal, &c. for this, THAT the said *James*, *Richard Wilkins* and *Richard Goddard*, on the first day of *October*, in the year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the first day of *June* then next following, with force and arms, &c. broke and entered the close of him the said *Thomas Tilbury*, called
Charley

Charley Dean and the *Bakelands*, at the parish of *Stephenton*, in the county of *Southampton*, and trod down and consumed the grass and cinquefoil of the said *Thomas Tilbury* then growing there, to the value of forty pounds, with their feet in walking, and other grass and cinquefoil of the said *Thomas Tilbury* then also there growing, to the value of twenty shillings, with divers cattle, to wit, with horses, oxen, cows, pigs and sheep, eat up, trod down and consumed; and also chased, drove, spoiled and killed divers cattle, to wit, one hundred sheep, and one hundred lambs of him the said *Thomas Tilbury*, of the price of forty shillings, then found in the parish of *Mitcheldever*, in the said county, and did him other wrongs, to the great damage of the said *Thomas Tilbury*, and against the peace of his present Majesty, whereby he says that he is prejudiced, and hath damage to the value of twenty pounds, and thereupon he brings his suit, &c. *Pledges.*

Goodfellow versus Mears.

—To wit. *William Goodfellow* complains of *Edward Mears*, in the custody of the marshal, &c. for this, THAT the said *Edward*, upon the fifteenth day of *September*, in the year of our Lord one thousand seven hundred and thirty three, with force and arms, &c. broke and entered two dwelling houses of him the said *William*, at the close of *New Sarum*, in the county aforesaid, and greatly disturbed him in the peaceable and quiet possession and occupation of his said houses, and ejected, expelled and amoved him from his possession and occupation thereof, and hath ever since withheld, and kept him so expelled and amoved from his possession and occupation thereof, and during all the said time taken to his own use all the issues and profits thereof, of the value of twenty pounds; and also the goods and chattels, to wit, one malting cistern, one pump, one hundred tons of stone, and two malt mills, of the said *William*, of the value of one hundred pounds, then found at the close of *New Sarum* aforesaid,

For turning plaintiff and his family out of doors.

took, seized, carried away, and converted and disposed of to his own use, and did him other wrongs, to the great damage of the said *William Goodfellow*, and against the peace of his present Majesty, whereby he says he is prejudiced and hath damage, &c.

Cottingham versus Leaver.

For destroying plain-
tiff's grass
and corn,
&c.

—To wit, *John Cottingham*, gent. complains of *Joseph Leaver*, in the custody of the marshal, &c. for this, THAT the said *Joseph* on the twentieth day of *February*, in the year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the eighteenth day of *June* then next following, with force and arms, &c. broke and entered the closes of him the said *John*, to wit, one close called the *Gravelly Furlong*, one other close called *Ditchaire*, in the parish of *Gifford*, in the county aforesaid, and his grass and corn, to wit, wheat, rye, barley, peas, beans, oats and vetches, of the value of forty pounds, then growing there, trod down and consumed with his feet in walking, and other his grass and corn, to wit, other wheat, rye, barley, beans, peas, oats and vetches, of the value of fifty pounds, then also growing there, with divers cattle, to wit, with horses, oxen, cows, pigs and sheep, eat up, trod down and consumed, and did him other wrongs, to the great damage of the said *John*, and against the peace of his present Majesty, whereby he says he is prejudiced and hath damage, &c.

Curtis versus Tap, one, &c.

For enter-
ing plain-
tiff's stable,
and taking
away his
horse.

—To wit, *John Curtis* complains of *Thomas Tap*, being one of the attornies of the court of our lord the King, before the King himself present here in court in his own person, for this, THAT the said *Thomas* was on the first day of *May*, in the year of our Lord

one thousand seven hundred and thirty six, with force and arms, the houses, to wit, one house called the dwelling house, and another house called the barn, and one other house called the stable of the said *John Curtis*, and the closes to wit, one close called *The Backside*, one other close called *Talbot's*, and one other close called *Plummer's Hay*, of him the said *John Curtis*, at the parish of *Studling*, in the isle of *Purbeck*, in the county of *Dorset*, broke and entered, and staid and continued in the same for a long time, to wit, for the space of six weeks then next following, and during all the said time greatly disturbed him in his quiet use and occupation thereof, and his cattle, to wit, one stone horse, one gelding, one mare, &c. of the value of other forty pounds, then and there found, took, led, carried away, and converted and disposed of the same to his own use, and did him other injuries, against the peace of his present Majesty, and to the damage, &c.

TRINITY TERM, 10 GEO. II.

Gater versus Kibly, and others.

—To wit. *James Gater* complains of *Joseph Kibly*, *John Rugg* and *Robert Newton*, in the custody of the marshal, &c. for this, THAT the said *Joseph* and *Robert* together with one *Thomas Bowles*, upon the thirty first day of *January*, in the year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the thirtieth day of *March*, in the year of our Lord one thousand seven hundred and thirty six, with force and arms, &c. the closes, to wit, one close called *Woodcroft*, and two other closes called *Butts Acres*, and two other closes called *Hogday's Close Ground*, of him the said *James*, at the parish of *Milverton*, in the county of *Somerset*, broke and entered, and his grass then growing there, to the value of forty shillings, trod down and consumed with their feet in walking, and other his grass and his corn, to wit, wheat, rye, barley, peas and oats, to the value of ten pounds, then likewise growing there, with

For breaking close, treading down grass, and consuming the same by defendant's cattle, &c.

divers cattle, to wit, with horses, oxen, cows, pigs and sheep, eat up, trod down and consumed, and the hedges and fences of the said *James*, to wit, five hundred perches of hedge, and five hundred perches of fence, of the value of forty pounds, then standing, growing and being there, felled, cut down and prostrated, and the trees, to wit, one thousand ash trees, one thousand oak trees, and one thousand elm trees, of him the said *James*, of the value of forty pounds, then also growing there, felled, cut down, topped, lopped, and pared, and the wood of the said *James*, of his said trees, hedges and fences so cut, to wit, one thousand cart load of wood, of the value of one hundred pounds then found there, took and carried away, and the gates of him the said *James* then standing and fixed, to wit, five gates of the value of five pounds, pulled down and prostrated, and broke the locks, to wit, five locks of the said *James* of his said gates, of the value of ten pounds, there found fastened to his said gates, and did him other injuries, against the peace of his present Majesty, and to the damage of the said *James* one hundred pounds, and thereupon he brings his suit, &c.

Plea.

AND the said *Joseph*, *John* and *Robert*, by *W. D.* their attorney, defend the force and injury, when, &c. and as to the coming with force and arms, and every thing that is against the peace of his present Majesty, and also as to all the trespasses aforesaid, except the breaking and entering the said closes, and treading down and consuming with their feet in walking the grass growing there, and eating up, treading down and consuming with horses, other the grass likewise growing there, by them the said *Joseph Kibly*, *John Rugg* and *Robert Newton*, above supposed to have been committed, they the said *Joseph*, *John* and *Robert* say, that they are in no wise guilty thereof, as the said *James Gater* above thereof complains against them, and of this they put themselves upon the country, and the said *James* doth the like; and as to the breaking and entering the said closes, and treading down and consuming with their feet in walking the grass growing there,

there, and eating up, treading down and consuming with horses other the grafs likewise growing there, by them the said *Joseph*, *John* and *Robert*, above supposed to have been committed, they the said *Joseph*, *John* and *Robert* say, that the said *James* ought not to have or maintain his said action against them for the same, because they say that before the said times when the said trespass is above supposed to have been committed, to wit, upon the said thirty first day of *January*, in the year of our Lord one thousand seven hundred and thirty five, at the parish of *Milverton* aforesaid, he the said *James Gater* gave licence to the said *Joseph Kibly* to enter into the said closes, in which, &c. to cut down, take and carry away certain wood and underwood of the said *Joseph Kibly's* then growing in the said close, in which, &c. by virtue of which said licence the said *Joseph Kibly* in his own right, and the said *John Rugg* and *Robert Newton* as his servants, and by his command, at the said time when, &c. entered into the said closes, in which, &c. in order to cut down, take and carry away the said wood and underwood of the said *Joseph Kibly*, then growing there, and then and there cut down, and with horses convenient for that purpose took and carried away the said wood and underwood of him the said *Joseph Kibly* then growing there, as it was lawful for them so to do, and in going and returning into and from the said closes, in which, &c. for the purpose aforesaid, and cutting down the said wood and underwood there, they necessarily trod down and consumed a little of the grafs then and there growing, of very small value, with their feet in walking, and the said horses in going into, being in and returning from the said closes, in which, &c. for the purpose aforesaid, necessarily trod and consumed a little other grafs then growing there, and also by snaps and morsels, against the will of the said *Joseph Kibly*, *John Rugg*, and *Robert Newton*, hastily bit a little other grafs of very small value then growing there, as it was lawful for them to do, which is the same breaking and entering the said closes, and treading down and consuming with their feet in walking

ing the grafs growing there, and eating up, treading down and consuming with horses other the grafs and corn likewise growing there, whereof the said *James* above complains against them, and this they are ready to verify; wherefore they pray judgment, if the said *James* ought to have on maintain his said action against them for the same.

R. Draper.

Replication. AND the said *James Gater* as to the said plea of the said *Joseph, John* and *Robert*, as to the trespasss alledged in breaking and entering the said closes, and treading down and consuming with their feet in walking the grafs growing there, and eating up, treading down and consuming with horses, other the grafs likewise growing there, by them committed, above pleaded in bar, saith, that by any thing in the said plea above alledged, he ought not to be barred from having his said action against them, because he saith that the said *Joseph, John* and *Robert*, upon the said thirty first day of *January*, in the said year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the thirtieth day of *March*, in the said year of our Lord one thousand seven hundred and thirty six, of their own wrong, and without the said cause by them above in their said plea alledged, broke and entered the said closes of the said *James*, and trod down and consumed with their feet in walking the grafs of the said *James*, of the value, &c. then growing there, and also eat up, trod down and consumed, with horses, other the grafs of the said *James*, of the value, &c. then likewise growing there, as the said *James* above thereof complains against them, and this he prays may be inquired, &c.

Vallance versus Chisman and others.

Assault and battery.

— To wit. *Richard Vallance* complains of *William Chisman*, otherwise *Cheasman*, and *Robert Mannel*, in custody of the marshal, &c. for that the said *William* and

and *Robert*, on the twenty fifth day of *March*, in the year of our Lord one thousand seven hundred and thirty six, with force and arms, to wit, with swords, clubs and staves, upon him the said *Richard*, at *Arne*, in the isle of *Purbeck*, and county of *Dorset* aforesaid, did make an assault, and did then and there beat, wound, imprison and evil intreat him, so that his life was despaired of, and him the said *Richard* so imprisoned against the will of the said *Richard*, without any reasonable cause, and against the laws and customs of this realm, for a long time, to wit, for the space of four days, kept and detained, and other injuries to him then and there did, against the peace of our sovereign lord the now King, and to the damage of the said *Richard* two hundred pounds, and thereof he brings his suit, &c.

AND the said *William Chifman*, otherwise *Cheafman*, Plea. and *Robert Mannel*, by their attorney, come before our said lord the King, at *Westminster*, and the said *William* and *Robert* defend the force and injury, when, &c. and as to the coming with force and arms, and every thing that is against the peace of his present Majesty, and also as to all the trespass aforesaid, except the assaulting, beating imprisoning, and keeping and detaining the said *Richard Vallance* in prison, for the space of four hours, parcel of the said four days in the said declaration abovementioned, by them the said *William* and *Robert* above supposed to have been committed, they the said *William* and *Robert* say that they are in no wise guilty thereof, as the said *Richard Vallance* above thereof complains against them, and of this they put themselves upon their country, and the said *Richard* likewise; and as to the assaulting, beating, imprisoning, keeping and detaining the said *Richard* in prison for the space of four hours, parcel of the said four days in the said declaration abovementioned, by them the said *William* and *Robert* above supposed to have been committed, they the said *William* and *Robert* say that the said *Richard* ought not to have or maintain his said action against them, because they say that before the said time when the said trespass, assault and imprisonment

imprisonment are above supposed to have been committed, and also at the said time, when, &c. he the said *William* was possessed of and in a certain dwelling house, with the appurtenances, situate at *Arne*, aforesaid, in the county aforesaid, and at the said time, when, &c. was in the peaceable and quiet possession of the said dwelling house; and the said *William* so possessed thereof, the said *Richard*, before the said time, when, &c. to wit, upon the twenty fifth day of *March*, in the said year of our Lord one thousand seven hundred and thirty six, between the hours of nine and eleven in the night of the same day, with force and arms, &c. at *Arne* aforesaid, in the county aforesaid, feloniously broke and entered the said dwelling house, and then and there secreted and concealed himself therein, whereupon the said *William*, and the said *Robert* as servant of the said *William*, and by his command, then finding the said *Richard* in the said dwelling house so concealed there as aforesaid, for the preservation of the said dwelling house, and of the lives of the said *William* and *Robert*, then dwelling therein, and in order to secure the said *Richard* and bring him to justice for the cause aforesaid, then and there gently laid their hands upon him the said *Richard*, and took, held and detained him in their custody for the space of four hours, as it was lawful for them to do, and this they are ready to verify; wherefore they pray judgment, if the said *Richard* ought to have his said action against them for the same.

Replication. AND the said *Richard Vallance* as to the said plea of them the said *William* and *Robert*, as to the trespass aforesaid, in assaulting, beating, imprisoning, and keeping and detaining him the said *Richard Vallance* in prison for the space of four hours, parcel of the said four days in the said declaration above mentioned by them committed, above pleaded in bar, saith, that he by any thing above alledged by them the said *William* and *Robert* in their said plea, ought not to be barred from having his said action against them for the same, because he says that the said *William* and *Robert*, upon the said twenty fifth day of *March*,

March, in the said year of our Lord one thousand seven hundred and thirty six, of their own wrong, and without the said cause by them above alledged upon him the said *Richard*, at *Arne* aforesaid, in the county aforesaid, did make an assault, and did then and there beat, imprison, and keep and detain him in prison there, against the will of the said *Richard*, without any reasonable cause, and against the laws and customs of this realm, for the said space of four hours, parcel of the said four days, as the said *Richard* above thereof complains against them, and this he prays may be inquired of by the country, and the said *William*, &c.

Gibbon versus Tribe and another.

—To wit. *Edward Gibbon*, Esq; complains of *William Tribe* and *John Mitchel*, in the custody of the marshal of the marshalsea of the lord the King, before the King himself, for this, THAT the said *William* and *John*, upon the twenty eighth day of *June*, in the year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the first day of *January*, in the year of our Lord one thousand seven hundred and thirty five, with force and arms, &c. broke and entered the close called *South Heath*, of him the said *Edward*, at the parish of *Petersfield*, in the county of *Southampton*, and his grafs then growing there, to the value of forty shillings, trod down and consumed with their feet in walking, and his sand, to wit, fifty cart loads of sand, of the value of ten pounds, then also being in the said close, dug up, subverted, took and carried away, and converted and disposed of the same to their own use; and also other his sand, to wit, fifty cart loads of other sand, of the value of other ten pounds, then found at the parish aforesaid, took, carried away and converted to their own use, and did other injuries, to the great damage of the said *Edward*, and against the peace of his present Majesty, whereby he says he is prejudiced, and hath damage to the value of twenty pounds, and thereupon he brings his suit, &c.

AND

Plea.

AND the said *William* and *John*, by *A. B.* their attorney, come and defend the force and injury, when, &c. and as to the coming with force and arms, and every thing that is against the peace of his present Majesty, and also as to all the trespasss aforesaid, except the breaking and entering the said close, and treading down and consuming with their feet in walking the grafs growing there, and digging and subverting, taking and carrying away the sand there being, by them the said *William* and *John* above supposed to have been committed, they the said *William* and *John* say that they are in no wise guilty thereof, as the said *Edward* above thereof complains against them, and of this they put themselves upon the country, and the said *Edward* likewise; and as to the breaking and entering the said close, and treading down and consuming with their feet in walking the grafs there growing, and digging up and subverting, taking and carrying away the same there being, by them the said *William* and *John* above supposed to have been committed, they the said *William* and *John* say that the said *Edward* ought not to have or maintain his said action against them for the same, because they say, that long before the said time when the said trespasss is above supposed to have been committed, and also at the said time when, &c. one *John Shackelford*, gent. was seised of and in a certain messuage and garden, with the appurtenances, situate, lying and being in the parish of *Petersfield*, in the county aforesaid, in his demesne as of fee; and the said *John Shackelford*, and all those whose estate he hath, and at the said times when, &c. had of and in the said messuage and garden, with the appurtenances, from time whereof the contrary is not in the memory of man, have dug up, taken and carried away, and been used and accustomed to dig up, take and carry away the sand lying and being in the said close called *South Heath*, in which, &c. every year, at all times of the year, for the use of their said messuage and garden, and to be used there as belonging and appertaining to the said messuage and garden, with the appurtenances; and the said *John Shackelford* being so seised thereof, the said

William

William and John Mitchel, as servants to the said *John Shackleford*, and by his command, at the said several times when, &c. entered into the said close called *South Heath*, in which, &c. in order to dig land there for the use of the said *John Shackleford's* said messuage and garden, with the appurtenances, and then and there dug up, took and carried away fifty cart loads of sand then being in the said close, in which, &c. for the use aforesaid, and used the same in the said messuage and garden, with the appurtenances, and in going and returning, and digging, taking and carrying away the said sand, they necessarily trod down a little grass of small value then growing in the said close, in which, &c. as it was lawful for them to do, which is the same breaking and entering the said close, and treading down and consuming with their feet in walking the grass growing there, and digging up, subverting, and taking and carrying away the sand there being, whereof the said *Edward* above complains against them, and this they are ready to verify; wherefore they pray judgment, if the said *Edward* ought to have or maintain his said action against them for the same.

Replication,

AND the said *Edward* as to the said plea of them the said *William and John Mitchel*, as to the said trespass in breaking and entering the said close, and treading down and consuming with their feet in walking the grass growing there, and digging up, subverting, taking and carrying away the sand there being, by them committed above in pleading in bar, saith that he by any thing by them the said *William and John* above in pleading alledged, ought not to be barred from having his said action against them, because he says that the said *William and John Mitchel*, upon the said twenty eighth day of *June*, in the said year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the first day of *January*, in the said year of our Lord one thousand seven hundred and thirty five, of their own wrong, broke and entered the said close called *South Heath*, of him the said *Edward*, at the parish of *Petersfield* aforesaid, and

his

his grafs then growing there, to the value &c. trod down and consumed with their feet in walking, and his fand to wit, fifty cart loads of fand, of the value, &c. then alfo being in the faid clofe, dug up, fubverted, took and carried away, and converted and difpofed of the fame to their own ufe, as the faid Edward above thereof complains againft them, without this, that *the faid John Shackelford, and all thofe whofe eftate he hath, and at the faid times when, &c. had of and in the faid meffuage and garden, with the appurtenances, from the time whereof the contrary is not in the memory of man have dug up, taken and carried away, and been ufed and accuftomed to dig up, take and carry away the fand lying and being in the faid clofe called South Heath, in which, &c. every year, at all times of the year, for the ufe of their faid meffuage and garden, to be ufed there as belonging and appertaining to the faid meffuage and garden, with the appurtenances, in manner and form as the faid William and John Mitchel have above in their pleading alledged, and this he is ready to verify; wherefore he prays judgment, and that his damages by reafon of the pre-miffes may be adjudged to him.*

Rejoinder.

AED the faid William and John Mitchel, (as before) fay, that the faid John Shackelford, and all thofe whofe eftate he hath, and at the faid time when, &c. had of and in the faid meffuage and garden, with the appurtenances, from time whereof the contrary is not in the memory of man, have dug up, taken and carried away, and been ufed and accuftomed to dig up, take and carry away, the fand lying and being in the faid clofe called South Heath, in which, &c. every year, at all times of the year, for the ufe of the faid meffuage and garden to be ufed there, as belonging and appertaining to the faid meffuage and garden, with the appurtenances, in manner and form as the faid William and John Mitchel have above in their pleading alledged, and of this they put themfelves on the country, and the faid Edward likewise.

Chubb

Chubb *versus* Pope.

—To wit. *John Chubb* complains of *Francis Pope* in the custody of the marshal, &c. for this, THAT the said *Francis*, upon the tenth day of *April*, in the year of our Lord one thousand seven hundred and thirty five, and at divers other days and times between that day and the first day of *March* then next ensuing, with force and arms, to wit, with swords, staves, and other offensive weapons, at *Basingstoke*, in the county aforesaid, made assault upon *Ann Chubb*, spinster, the daughter and then servant of the said *John*, and beat, wounded and evil entreated her, and debauched her, and carnally knew her and got her with child, whereby the said *John* lost the comfort and service of his said daughter and servant for a long time, to wit, during all the time aforesaid, and was forced to be at great labour and trouble, and to lay out a large sum of money, to wit, one hundred pounds in maintaining and taking care of her in her lying in of the said child, and also upon the several days aforesaid, with force and arms, &c. broke and entered the dwelling house of the said *John Chubb*, and greatly disturbed him in his quiet possession and enjoyment thereof, and did him other injuries, against the peace of his present Majesty, and to the damage of the said *John* one thousand pounds, and thereupon he brings suit, &c.

For breaking and entering plaintiff's house, and debauching his daughter

MICHAELMAS TERM 9 Geo. II. 1736.

Archer, Esq; versus Richmond and another.

—To wit. *Thomas Archer, Esq;* complains of *William Richmond* and *William Wheatly*, in the custody of the marshal, &c. for this, THAT the said *William Richmond* and *William Wheatly*, upon the seventeenth day of *July*, in the year of our Lord one thousand seven hundred and thirty six, with force and arms, &c. broke and entered the close of him the said *Thomas*, called *Hale Common*, otherwise *Hale Purlieu*, in the parish

For digging peat, &c.

rish of *Hale*, in the county aforesaid, and the soil, turves, peat and heath of the said *Thomas*, to wit, forty cart loads of soil, forty cart loads of turves, forty cart loads of peat, and forty cart loads of heath, of him the said *Thomas*, of the value of forty pounds, then and there found, cut, dug up, took and carried away, and the furzes and fern of him the said *Thomas*, to wit, forty cart loads of furzes and forty cart loads of fern, to the value of five pounds, then and there growing, cut, dug up, took and carried away; and the grass of the said *Thomas* then growing there, to the value of ten shillings, trod down and consumed with their feet in walking, and other grass of the said *Thomas* then growing there, to the value of forty shillings, with horses, mares, geldings, oxen, carts and carriages, trod down, pressed down and consumed, and did him other wrongs to the great damage of the said *Thomas*, and against the peace of his present Majesty, whereby he says he is prejudiced, and hath damage to the value of one hundred pounds, and thereupon he brings his suit, &c.

Archer versus Barter.

Forttreading
down plain-
tiff's grals.

—To wit. *Thomas Archer*, Esq; complains of *Matthew Barter*, in custody, &c. for this, THAT the said *Matthew*, on the day of in the year of our Lord one thousand seven hundred and thirty seven with force and arms, &c. the close of him the said *Thomas*, called *Densam Coppice*, in the parish of *Hale*, in the county aforesaid, broke and entered, and his grass then growing there trod down and consumed with his feet in walking, and other wrongs to the said *Thomas* then and there did, to the great damage of the said *Thomas*, and against the peace of our sovereign lord the now King; wherefore he saith that he is injured, and hath sustained damage to the value of twenty pounds, &c.

For mesne
profits in
trespass and
ejectment.

C. D. late of, &c. was attached to answer *A. B.* in a plea, wherefore with force and arms he broke and entered into (all the premises in declaration in ejectment) with

with the appurtenances, of the said *A.* and expelled and removed the said *A.* from the possession and occupation of the same tenements; and the said *A.* so expelled and removed from his possession and occupation of the same tenements; kept and held out for a long time, and for all that time took and received to his own use the issues and profits of the same tenements, of the yearly value of and did him the said *A.* other injuries, to the great damage and against the peace of the late King *George the first*, and also against the peace of his present Majesty, &c. and whereupon the said *A.* by his attorney complains that the said *C. D.* on the day of in the year of the reign of the late King *George the first*, with force and arms, broke and entered into, &c. with the appurtenances of the said *A.* and expelled and removed the said *A.* from the possession and occupation of the same tenements, kept and held out for a long time, to wit, from the said day of in the twelfth year aforesaid, until the day of in the year of the reign of the present King, and for all that time took and received to his own use all the issues and profits of the same tenements, of the yearly value, &c. and other injuries, &c. to the great damage, &c. wherefore he saith that he is damnified to the value, &c.

—To wit. *A. B.* complains of *C. D.* in the custody of the marshal, &c. for this, THAT the said *C.* on the first day of *September*, in the year of our Lord one thousand seven hundred and thirty eight, with force and arms, &c. broke and entered the house of him the said *A.* in the parish of *Southwark*, in the said county; and the looking glass, being the property of the said *A.* and of the value of forty shillings of lawful money of this kingdom, being then and there found, took and carried away, and did him other wrongs, to the great damage, and against the peace of his present Majesty, whereby he says he is prejudiced,

Forentering
plaintiff's
house, and
taking away
his goods.

DECLARATIONS, PLEADINGS, &c.

diced, and hath damage to the value of one hundred pounds, and therefore he brings this suit, &c.

Plea.

AND the said C. by J. E. his attorney, comes and defends the force and injury, when, &c. and as to the coming with, and to the force and arms, saith, that he is not guilty thereof, and of this he puts himself upon his country, and the said A. doth the like; and as to the rest of the trespasss charged in the declaration, he the said C. saith, that he the said A. ought not to have his said action against him, because, taking by protestation, that the looking glass was not of so great value as is mentioned in the declaration; for plea, he the said C. saith, that upon the twenty first day of *October*, in the fifth year of the reign of his present Majesty, and long before that time, and ever since, one W. was, and yet is seised in his demesne, as of fee of the manor of *Old Paris Garden*, with the appurtenances, in the county of *Surry*; and he the said W. and all those whose estate he now hath, and had at the time when the supposed trespasss was committed in the said manor, with the appurtenances, from time immemorial, had and held, and have still been accustomed to have and hold a court leet, or view of *Frankpledge*, within the said manor, twice in every year, that is to say, once within a month next after *Easter*, and again within a month next after *Michaelmas*, of all the inhabitants and residents within the said manor, to be holden within the manor aforesaid, as appurtenant to the manor aforesaid; and the said C. further saith, that at the time the supposed trespasss was committed, and at the time of the summons hereafter mentioned, and long before, and ever since, the said A. was, and still is an inhabitant and resident within the said manor, and within the precincts and jurisdiction of the court leet above mentioned, and before the time the supposed trespasss was committed, to wit, on the third day of *October*, in the fifth year of the reign of his present Majesty, within the manor aforesaid, the said A. was duly summoned to appear at the then next court leet, to be holden within, and for the

said

manor, on *Thursday* the twenty first day of the then instant month of *October*; and the said *C.* further saith, that within a month after *Michaelmas*, to wit, on *Thursday* the twenty-first day of *October* aforesaid, the next court leet was holden within, and for the said manor, before *L. F.* gent. steward of the said court, at which said court the said *A.* (although solemnly and openly called) did not appear, but made default, and thereupon it was presented by twelve honest and lawful men, then inhabiting and residing within the said manor, and then and there charged, and sworn by the said court, to present all such things as were presentable at the said court, that he the said *A.* was then a resident and inhabitant within the said manor, (and although duly summoned, and solemnly called) did not appear at the said court, but had made default, by reason of which it was considered by the said court, that the said *A.* should be amerced, which said amerciamment, by the said *J. B.* and *J. R.* then inhabitants within the manor aforesaid, and then and there chosen and sworn assessors by the said court, was then and there duly assessed to the sum of thirteen shillings and four pence, of which the said *A.* afterwards, and before the time of the supposed trespass committed, to wit, on the twenty-fourth day of *May*, in the fifth year of the reign of his present Majesty, at the parish of aforesaid, had notice, and was then and there required by the said *C.* who then was, and ever since has been, bailiff of the said manor, to pay the said sum of thirteen shillings and fourpence, which the said *A.* refused to do, by reason of which the said *C.* bailiff of the said manor, by virtue of a warrant, made and signed by the said steward of the court aforesaid, and to him the said *C.* as bailiff of the said manor directed, whereby he the said bailiff was authorized and required to distrain the goods of the said *A.* for the said sum of thirteen shillings and four pence; and he the said *C.* did afterwards, to wit, on the said first day of *September*, in the said sixth year of the reign of his present Majesty, in the declaration above specified, enter into the house of the said *A.* in the declaration mentioned,

and being within the said manor, (the door being open) to distrain for the same; and the said C. then and there finding the said looking glass in the said house, did then and there take the said looking glass as a distress, and the same did carry away, as was lawful for him to do, which is the residue of the trespass of which the said A. complains, and this he is ready to verify; whereupon he prays judgment, if the said A. ought to have his said action against him.

J. Darnell.

AND the said A. as to the plea aforesaid of the said C. as to the rest of the trespass above pleaded, saith, that he, by any thing by the said C. above in pleading alledged, ought not to be precluded from having his said action against the said C. because he saith, that he the said A. was not duly summoned to appear at the court leet, holden within, and for the manor aforesaid, on the said *Thursday*, the twenty first day of *October*, in the said fifth year of the reign of his present Majesty, as by the said C. in his plea is alledged, and this he prays may be enquired of by the country.

W. Chapple.

TROVER AND CONVERSION.

TRINITY TERM, 8 and 9 GEO. II.

Beke *versus* Shepard.

—To wit. **W**ILLIAM BEKE complains of *John Shepard*, in custody of the marshal, &c. FOR THAT WHEREAS the said *William* on the first day of *April*, in the year of our Lord one thousand seven hundred and thirty five, at *Stockbridge*, in the county aforesaid, was possessed of the goods and chattels following, to wit, four yards and an half of broad cloth, and four yards and an half of other cloth, of the value of ten pounds, as of his own proper goods and chattels, and being so possessed the said *William* afterwards, to wit, on the day and year aforesaid, at *Stockbridge* aforesaid, in the county aforesaid, lost the said goods and chattels out of his hands and possession, which said goods and chattels being so lost, afterwards, to wit, on the day and year aforesaid, at *Stockbridge* aforesaid, in the county aforesaid, came to the hands and possession of the said *John* by finding, yet the said *John*, knowing the said goods and chattels to be the proper goods and chattels of the said *William*, and of right to belong and appertain to the said *William*, yet contriving, and fraudulently intending to deceive and defraud the said *William* in this behalf (although often requested) hath not delivered the said goods and chattels to the said *William*, but afterwards, to wit, on the day and year aforesaid in the county aforesaid

K k 2

converted

DECLARATIONS, PLEADINGS, &c.

converted and disposed of the said goods and chattels to his own use, to the damage of the said *William* ten pounds, and thereof he brings his suit, &c.

Plea of
award.

AND the said *John* defends the force and injury, when, &c. and saith, that the said *William* ought not to maintain any further his said action against him, because he saith, that after the exhibiting of the bill of the said *William* aforesaid, and pending the same bill, that is to say, on the tenth day of *May*, in the said year of our Lord one thousand seven hundred and thirty-five, as well the said *William* as he the said *John*, at *Stockbridge* aforesaid, in the county aforesaid, submitted themselves to the award of *James Webb* and *John Lane*, to award, order and adjudge of and concerning the said action and suit so as aforesaid then depending between them, and the cause thereof, and the aforesaid *John* saith, the said arbitrators having taken upon them the burthen of the said award, afterwards, that is to say, on the said tenth day of *May*, in the year aforesaid, at *Stockbridge* aforesaid, in the county aforesaid, did award, that the said *John* should return to the use of the said *William* a piece of broad cloth, containing four yards and an half, being the cloth for which the said action was brought, and the matter in dispute between the said parties; and that the said *John* should receive back again five shillings which he had paid on account of the said cloth, and that each party should pay and bear their own expences in the said suit, and all further proceedings in the said suit should cease, and that the said *John* should spend half a crown in liquor upon the company; and the aforesaid *John* doth aver, that afterwards, to wit, on the day and year aforesaid, at *Stockbridge* aforesaid, he the said *John* did return to the use of the said *William* the aforesaid piece of cloth, and did then and there receive back the said five shillings, and then and there did spend and lay out half a crown in liquor upon the said company, of which the aforesaid *William* then and there had his full share, and hath since paid and borne his own expences in the said suit, that is to say, at
Stockbridge

Stockbridge aforesaid, in the county aforesaid, and this he is ready to verify, wherefore he prays judgment if the said *William* ought to maintain any further his action against him.

Edward Bootle.

AND the said *William* saith, that by any thing by Replication. the said *John* above in pleading alledged, he ought not to be barred from having and maintaining his said action against him, because he saith, that no submission, award and performance thereof were had and made as in the said plea above alledged, and this the said *William* prays may be enquired by the country, and the said *John* likewise, therefore, &c.

R. Draper.

MICHAELMAS TERM, 8 GEO. II.

Bancks versus Jeans.

—To wit. *Robert Bancks*, Esq; complains of *Thomas Jeans*, in custody, &c. for this, THAT WHEREAS the said *Robert* upon the first day of *May* in the year of our Lord one thousand seven hundred and thirty-five, at *Basingstoke*, in the county of *Southampton*, was possessed of divers goods and chattels, that is to say, of thirty ton weight of paving stones, thirty ton weight of other stone for building; three thousand bricks, and ten cart loads of timber, of the value of sixty pounds, as of his own proper goods and chattels, and being so possessed thereof, the said *Robert* afterwards, that is to say, on the same day and year abovesaid, at *Basingstoke* aforesaid, casually lost the said goods and chattels out of his hands and possession, which said goods and chattels afterwards, to wit, on the same day and year abovementioned, at *Basingstoke* aforesaid, came to the hands and possession of the said *Thomas* by finding the same, yet the said *Thomas* well knowing the said goods and chattels to be the proper goods of him the said *Robert*, and of right to belong and

and appertain to him, but devising and fraudulently intending, craftily and subtilly to deceive and defraud the said *Robert* of the said goods and chattels, hath not delivered the said goods and chattels, nor any of them to the said *Robert* (although often requested so to do) but afterwards, that is to say, upon the second day of *May*, in the year aforesaid, at *Basingstoke* aforesaid, converted and disposed of the said goods and chattels to his own use, to the damage of the said *Robert* sixty pounds, and thereupon he brings his suit, &c.

Vallis versus Ford.

—To wit. *Robert Vallis* complains of *Thomas Ford* and *William Cob*, in the custody of the marshal, &c. for this, THAT the said *Thomas Ford* and *William Cob* upon the fifth day of *November*, in the year of our Lord one thousand seven hundred and thirty-six, with force and arms, &c. broke and entered the houses, to wit, one house called the stable, one house called the cowhouse, and one house called the barn, of the said *Robert*, at the parish of *Clanford Magna*, in the county aforesaid, and his dung, to wit, one hundred cart loads of dung, of the value of ten pounds, there found, took and carried away, and converted and disposed of the same to their own use, and other his dung, to wit, one hundred cart loads of other dung of the said *Robert*, of the value of other ten pounds, then found at the parish aforesaid, took and carried away, and converted and disposed of the same to their own use, and did him other wrongs, to the great damage of the said *Robert*, and against the peace of his present Majesty, whereby he says he is prejudiced, and hath damage to the value of ten pounds, and thereupon he brings his suit, &c.

WRITS.

W R I T S.

Taunton versus Higgins.

GEORGE the Second, by the grace of God, of Inquiry on recovering estate by descent. *Great Britain, France and Ireland*, King, defender, &c. To the sheriff of *Somerset*, greeting.

WHEREAS *Thomas Taunton*, lately in our court before us at *Westminster*, by the consideration of the same court recovered against *Thomas Higgins* and *Mary* his wife, late *Mary Barnes*, spinster, daughter and heir of *John Barnes* deceased, as well a certain debt of forty pounds as sixty three shillings, which were adjudged to the said *Thomas Taunton* in our same court, for his damages which he had sustained, as well by reason of detaining of his said debt as for his costs and charges by him laid out about his suit in that behalf, to be levied of a certain part or share called the eastern moiety of a messuage with the appurtenances, and also of an undivided moiety of an orchard and outhouses to the said eastern moiety belonging, and also of an acre of pasture lying in a certain close called *Rooksbridge*, and also of an acre of pasture, lying by the side of a certain river called *Boltram River*, and also of an undivided moiety of two acres of pasture lying in a certain field called *Stonewood* with the appurtenances, all the said premises lying in the parish of *Hornblotton*, in your county, which said tenements with the appurtenances came to the said *Mary* by hereditary descent from the said *John Barnes*, her said late father who died seised thereof in fee simple, whereof the said *Thomas Higgins* and *Mary* are convicted, as by the record now remaining in our court before us fully appears; but inasmuch as it is not known how much the said tenements

ments with the appurtenances are worth by a year, in all issues beyond reprises, we command you, that you diligently inquire by the oath of good and lawful men of your bailiwick, how much the said tenements with the appurtenances are worth by the year, in all issues beyond reprises, and the said inquisition being diligently by you taken, that you do without delay deliver to the said *Thomas Taunton* the said tenements with the appurtenances, according to the true value thereof, To hold the same unto the said *Thomas Taunton* and his assigns, until he shall have levied thereof the debt and damages aforesaid; and in what manner you shall execute this our writ, make known to us at *Westminster*, on *Wednesday* next, after three weeks of the *Holy Trinity*, under your seal, and the seals of those by whose oath you shall have taken the said inquisition, and have you there the names of them by whose oath you take the said inquisition, and this writ. Witness *Philip Lord Hardwicke*, &c.

R. Draper.

Norris v̄ersus Kemp.

George the Second, &c. To the Sheriff of Hampshire, greeting.

Fieri facias
and return.

WE command you, that you cause to be levied in your bailiwick, of the goods and chattels which were *Mary Nash's*, widow, deceased, lately called *Mary Toomer*, spinster, at the time of her death, in the hands of *Anthony Kemp*, Esq; executor of the last will and testament of the said *Mary*, being to be administered, as well a certain debt of one thousand pounds, which *William Norris*, administrator of all and singular the goods and chattels, rights and credits which belonged to *Nicholas Norris*, his late father, deceased, who died intestate in our court before us at *Westminster*, recovered against the said *Anthony*, as fifty pounds which were adjudged to the said *William*, in the said court before us, for his damages which he had sustained, as well by reason of detaining of his said debt, as for his costs and

and charges by him laid out about his suit in that behalf, whereof the said *Anthony* is convicted, as it appears to us of record, if he hath sufficient of the said goods and chattels in his hands to be administered, and if he hath not, then the damages aforesaid of the said goods and chattels of the said *Anthony*, and have you that money before us at *Westminster*, upon to render to the said *William* for his debt and damages aforesaid, and have you then there this writ. Witness, &c.

By virtue of this writ to me directed, I humbly certify to our lord the King, that the within named *Anthony Kemp* hath no goods and chattels which were the within named *Mary Nash's* at the time of her death in his hands, to be administered in my bailiwick, whereof I can levy the debt and damages within written, or any part thereof, but that divers goods and chattels which were the within named *Mary Nash's* at the time of her death, to the value of the debt and damages within mentioned after the death of the said *Mary*, came to the hands of the said *Anthony Kemp* to be administered, and that the said *Anthony*, before the coming of this writ to me, wasted, and converted and disposed of the said goods and chattels to his own use, and I further humbly certify, that the said *Anthony* hath no goods and chattels of his own in my bailiwick, whereof I can levy the damages within mentioned, as I am within commanded to do.

George the Second, &c. To the Sheriff of Hampshire, greeting.

WHEREAS we lately commanded you, that you should cause to be levied in your bailiwick, of the goods and chattels which were *Mary Nash's*, widow, deceased, lately called *Mary Toomer*, spinster, at the time of her death in the hands of *Anthony Kemp, Esq;* executor of the last will and testament of the said *Mary*, being to be administered, as well a certain debt of one thousand pounds which *William Norris*, administrator of all and singular the goods and chattels, rights and credits,

*Fieri facias
de bonis
propriis.*

credits, which belonged to *Nicholas Norris* his late father deceased, who died intestate in our court, before us at *Westminster*, recovered against the said *Anthony*, as fifty pounds which were adjudged to the said *William* in the same court before us, for his damages which he had sustained, as well by reason of the detaining his said debt, as for his costs and charges by him laid out about his suit in that behalf, whereof the said *Anthony* was convicted, as it appears to us upon record, if he had sufficient of the said goods and chattels in his hands to be administered, and if he had not, then the damages aforesaid of the proper goods and chattels of the said *Anthony*, and that you have that money before us at *Westminster*, upon now last past, to render to the said *William* for his debt and damages aforesaid.

AND WHEREAS at that day you returned to us, that the said *Anthony Kemp* had no goods nor chattels which were the said *Mary Nash's* at the time of her death in his hands, to be administered in your bailiwick, whereof he could levy the debt and damages aforesaid or any part thereof, but that divers goods and chattels which were the said *Mary Nash's* at the time of her death, to the value of the debt and damages aforesaid, after the death of the said *Mary* came to the hands of the said *Anthony Kemp* to be administered, and that the said *Anthony*, before the coming of that writ to you, wasted, converted, and disposed of the said goods and chattels to his own use; and you also returned, that the said *Anthony* had no goods nor chattels of his own in your bailiwick whereof he could levy the damages aforesaid, therefore we command you, that you cause the debt and damages aforesaid to be levied of the proper goods and chattels of the said *Anthony* in your bailiwick, and have you that money before us at *Westminster*, upon to render to the said *William* for his debt and damages aforesaid, and have you then there this writ, &c.

R. Draper.

George

*George the Second &c. To the Sheriff of Suffex,
greeting.*

WHEREAS we lately commanded our sheriff of *Hampshire*, that he should cause to be levied in his bailiwick, of the goods and chattels which were *John Geldring's*, deceased, otherwise lately called *John Geldring*, of the borough of *Southwark*, in the county of *Surry*, carrier, otherwise lately called *John Geldringe*, of the borough of *Southwark*, in the county of *Surry*, carrier, at the time of his death, in the hands of *Roger Geldring* and *Hillis Geldring*, the surviving executors of the last will and testament of the said *John Geldring*, being administered, as well a certain debt of four hundred pounds, which *Elizabeth Graham*, widow and relict of *William Graham*, Esq; her late husband, deceased, lately, called *Elizabeth Rook*, widow, executrix of the last will and testament of *Edward Rook*, gent. her late husband, deceased, in our said court before us at *Westminster*, recovered against the said *Roger* and *Hillis*, as forty two pounds which were adjudged to the said *Elizabeth* in the same court before us for her damages which she sustained as well by reason of detaining her said debt, as for her costs and charges by her laid out about her suit in that behalf, whereof the said *Roger* and *Hillis* were convicted, as it appeared to us of record, if they had sufficient of the said goods and chattels in their hands to be administered; and if they had not, then the damages aforesaid of the proper goods and chattels of the said *Roger* and *Hillis*; and that he should have that money before us at *Westminster*, on *Wednesday* next after three weeks from the day of the *Holy Trinity* now last past, to render to the said *Elizabeth* for her debt and damages aforesaid.

Fieri facias.

*Damages de
bonis pro-
pria.*

AND WHEREAS at that day he returned to us, that the said *Roger* and *Hillis* had no goods nor chattels which were the said *John Geldring's* at the time of his death in their hands, to be administered in his bailiwick, whereof he could levy the debt and damages aforesaid,

Devastavit.

Debt and da-
mages *de*
bonis pro-
priis.

Part levied.

Testatum
fieri facias
into Suffex.

aforesaid, or any part thereof, but that divers goods and chattels which were the said *John Geldring's* at the time of his death, to the value of the debt and damages aforesaid, after the death of the said *John*, came to the hands of the said *Roger* and *Hillis* before the coming of that writ to him, who wasted and converted, and disposed of the said goods and chattels to their own use; and he also returned, that the said *Roger* and *Hillis* had no goods nor chattels of their own in his bailiwick whereof he could levy the damages aforesaid; and whereas it has been signified to us in our said court before, that the said *Roger* and *Hillis* had divers goods and chattels of their own in his bailiwick wherewith to satisfy the debt and damages aforesaid, therefore we commanded him, that he should cause the debt and damages aforesaid to be levied of the proper goods and chattels of the said *Roger* and *Hillis* in his bailiwick; and that he should have that money before us at *Westminster*, on a certain day now past, to render to the said *Elizabeth* for her debt and damages aforesaid; and our said sheriff of *Hampshire*, at that day returned to us, that by virtue of the said writ to him directed, he had made of the goods and chattels of the said *Roger Geldring*, two hundred and thirty seven pounds eighteen shillings and sixpence; and that he had paid the same to the said *Elizabeth Graham* in part of satisfaction of the said debt and damages; and that the said *Roger Geldring* had no other or more goods and chattels in his bailiwick whereof he could levy the residue of the said debt and damages; whereupon, on the behalf of the said *Elizabeth Graham*, it is sufficiently testified in our court before us, that the said *Roger* and *Hillis* have goods and chattels, which were the said *John Geldring's* at the time of his death sufficient in your bailiwick whereof you may cause to be levied the residue of the said four hundred and forty two pounds; therefore we command you, that of the goods and chattels which were the said *John Geldring's* at the time of his death, in the hands of the said *Roger* and *Hillis* in your bailiwick, you cause to be made two hundred and four pounds one shilling and sixpence, residue of the said

four hundred and forty two pounds, and have that money before us at *Westminster*, on *Monday* next after the octave of *St. Hillary*, to render to the said *Elizabeth Graham* for the residue of her debt and damages aforesaid, and have then there this writ.

—To wit. By virtue of the writ of our lord the King to me directed, and to this schedule annexed, I made my warrant, directed to *A. B.* and *C. D.* my bailiffs, to take and arrest *Isaac Hunt* in the said writ named, which said *A. B.* and *C. D.* my bailiffs aforesaid, by virtue of the aforesaid warrant, afterwards, and before the return of the said writ, to wit, upon the fourth day of *August*, in the tenth year of the reign of our Sovereign lord *George* the Second, by the grace of God, of *Great Britain, France* and *Ireland*, King, defender of the faith, &c. at *Stoke Damerel*, in the said county of *Devon*, in my bailiwick, did take and arrest the body of the said *Isaac Hunt*, and had him the said *Isaac Hunt* then and there in custody, upon which *Thomas Tucker* of *Plymouth*, in the said county, ropemaker, and *Thomas Love* of *Stoke Damerel* aforesaid, ship carpenter, then and there, to wit, at *Stoke Damerel* aforesaid, in the county aforesaid, with force and arms, in and upon the aforesaid *A. B.* and *C. D.* my bailiffs aforesaid, did make an assault and affray, and them the said *A. B.* and *C. D.* my bailiffs aforesaid, did then and there with force and arms beat, wound, and ill treat, and then and there with force of arms, did rescue the said *Isaac Hunt* out of the custody of the said *A. B.* and *C. D.* my bailiffs aforesaid, against my will, and against the will, and without the consent of them the said *A. B.* and *C. D.* and the said *Thomas Tucker* and *Thomas Love* did then and there permit him the said *Isaac Hunt* to go at large where he pleased, and the said *Isaac Hunt* did then and there with force and arms rescue himself, and escape out of the custody of the said *A. B.* and *C. D.* my said bailiffs, against my will, and against the will and without the consent of the said *A. B.* and *C. D.* and against the peace of our said lord the King, his crown and dignity; and afterwards, and before

Return of a
rescue.

before the return of the said writ, the said *Isaac Hunt* is not found in my bailiwick, and therefore I cannot have the body of the said *Isaac Hunt* before the lord the King at the day and place in the said writ mentioned, as by the writ I am commanded.

The answer of S. R. Esq; Sheriff.

George the Third, &c. To the Right Reverend Father in God, by Divine Permission, Lord Bishop of Durham, greeting.

*Testatum
fieri facias
de bonis ec-
clesiasticis
into Dur-
ham, in
cale.*

WE command you, that by our writ, under the seal of your bishoprick duly to be made, and to the sheriff of the county of *Durham* to be directed, you command him, that of the ecclesiastical goods of *James Trusler*, late of in your diocese, you cause to be made one thousand pounds, which *Nathaniel Smith*, lately in our court before us at *Westminster*, recovered against him for his damages which he had sustained, as well by means of the not performing certain promises and undertakings, lately made by the said *James* to the said *Nathaniel*, as for his costs and charges by him laid out about his suit in this behalf, whereof the said *James* is convicted, as appears to us of record; and have you the said money before us at *Westminster*, on *Tuesday* next after the morrow of *Saint Martin*, to render to the said *Nathaniel* for his damages aforesaid; and our sheriff of *Middlesex*, at a certain day now past, returned to us, that the said *James* had not any goods in his bailiwick, whereof he could cause to be levied the damages aforesaid, or any part thereof; whereas it is testified in our same court before us, that the said *James* hath sufficient goods in your county palatine, whereof the sheriff of your county palatine may cause to be levied the damages aforesaid, and every part thereof; and have you there then this writ.

Witness *William Earl Mansfield*, at *Westminster*, the seventh day of *November*, in the twenty sixth year of our reign.

Stormont and Way.
George

George the Third. To the Sheriff of Kent, greeting.

WHEREAS *Peter Free*, lately in our court, before *Elegit* in us at *Westminster*, by will, without our writ, and by the debt judgment of the said court, recovered against *William Reynolds*, as well a certain debt of one hundred pounds as sixty three shillings, which in our said court before us were adjudged to the said *Peter* for his damages which he sustained by means of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, whereof the said *William* is convicted, as appears to us of record; and because the said *Peter* came into our court before us, and chose to have delivered to him all the goods and chattels of the said *William*, (except the oxen and beasts of the plough) and likewise a moiety of all and singular the lands and tenements of the said *William* in your bailiwick, to hold to him and his assigns, as his free tenement, according to the form of the statute in such case made and provided, until he shall thereof have levied the said debt and damages, therefore we command you, that without delay, you cause to be delivered to the said *Peter*, by reasonable price and extent, all the goods and chattels of the said *William* in your bailiwick, (except the oxen and beasts of the plough) and likewise a moiety of all the lands and tenements of the said *William* in your bailiwick, of which the said *William*, on the day of (the day the judgment was signed) in the twenty third year of our reign (on which day the judgment was given) was, or at any time since hath been seised to him the said *Peter*, to hold to him the said goods and chattels, as his own proper goods and chattels; and also to hold to him and his assigns a moiety of the said lands and tenements as his own free tenement, according to the form of the said statute, until he shall thereof have fully levied the said debt and damages; and in what manner you shall have executed this your writ, make appear to us at *Westminster*, on *Tuesday* next after the morrow of *Saint Martin*, under your seal, and the seals of them by whose oath you shall make the said extent and appraisement, and have there then this writ.

Witness, &c.

George

George the third, &c. To the Sheriff of Middlesex, greeting.

Fieri facias
for costs on
a non-suit.

WE command you, that you cause to be levied of the goods and chattels in your bailiwick of *David Chester*, fourteen pounds, which were awarded to *Peter Nelson* in our court, before us at *Westminster*, according to the form of the statute in that case made and provided, for his expences and costs which he had been put to by reason of the false claim of the said *David*, in a certain plea of trespass on the case, prosecuted in our said court before us by the said *David* against the said *Peter*; and have you that money before us at *Westminster*, &c.

George the Third, &c.

Fieri facias
against an
administra-
trix. when
she confesses
the debt of
the testator.

WE command you, that you cause to be levied of the goods and chattels in your bailiwick, which were of *Richard Morgan* at the time of his death, in the hands of *Mary*, administratrix of all and singular the goods and chattels, rights and credits, which were of the said *Richard*, deceased, at the time of his death, who died intestate, to be administered, forty pounds of which to *John Tims* in our court, before us at *Westminster*, were adjudged to him for his damages, costs and charges, which he had sustained, by reason of the non performance of certain promises and undertakings, made by the said *Richard Morgan* in his lifetime to the said *John*, whereof the said *Mary* is convicted, as appears to us of record, if she has so much thereof in her hands to be administered, then that you cause to be levied six pounds ten shillings, being the costs and charges of the said *John*, and parcel of the damages aforesaid of the proper goods and chattels of the said *Mary*, and have that money before us at *Westminster*, on *Tuesday* after the morrow of *Saint Martin*, to render to the said *John* for his damages aforesaid; and have there then this writ.

Witness, &c.

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Ex. J. M.